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# IDAHO CODE

CONTAINING THE

## GENERAL LAWS OF IDAHO ANNOTATED

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LAWS 1949, CHAPTER 167 AS AMENDED

Compiled Under the Supervision of the  
Idaho Code Commission

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**TITLES 38, 39 (1-44)**

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## **PUBLISHER'S NOTE**

Since the publication in 2002 of the last edition of this volume, many laws have been amended or repealed and many new laws have been enacted. The resulting increase in the size of the cumulative supplement for the former volume has made it necessary to revise this volume. Accordingly, this new volume with Replacement Titles 38 and 39 (Chapters 1-44) is issued with the approval and under the direction of the Idaho Code Commission.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals and the appropriate federal courts. These cases will be printed in the following reports:

Idaho Reports  
Pacific Reporter  
Federal Supplement  
Federal Reporter  
United States Supreme Court Reports, Lawyers' Edition

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

I.R.C.P.	Idaho Rules of Civil Procedure
I.R.E.	Idaho Rules of Evidence
I.C.R.	Idaho Criminal Rules
M.C.R.	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
I.A.R.	Idaho Appellate Rules

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## **USER'S GUIDE**

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To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first volume of this set.





## ADJOURNMENT DATES OF SESSIONS OF LEGISLATURE

Article 3, § 22 of the Idaho State Constitution provides: "No act shall take effect until sixty days from the end of the session at which the same shall have been passed, except in case of emergency, which emergency shall be declared in the preamble or in the body of the law."

Section 67-510 Idaho Code provides: "No act shall take effect until July 1 of the year of the regular session or sixty (60) days from the end of the session at which the same shall have been passed, whichever date occurs last, except in case of emergency, which emergency shall be declared in the preamble or body of the law."

Every joint resolution, unless a different time is prescribed therein, takes effect from its passage."

This table is given in order that the effective date of acts, not carrying an emergency or which do not specify an effective date, may be determined with a minimum of delay.

Year	Adjournment Date
1921 .....	March 5, 1921
1923 .....	March 9, 1923
1925 .....	March 5, 1925
1927 .....	March 3, 1927
1929 .....	March 7, 1929
1931 .....	March 5, 1931
1931 (E.S.) .....	March 13, 1931
1933 .....	March 1, 1933
1933 (E.S.) .....	June 22, 1933
1935 .....	March 8, 1935
1935 (1st E.S.) .....	March 20, 1935
1935 (2nd E.S.) .....	July 10, 1935
1935 (3rd E.S.) .....	July 31, 1936
1937 .....	March 6, 1937
1937 (E.S.) .....	November 30, 1938
1939 .....	March 2, 1939
1941 .....	March 8, 1941
1943 .....	February 28, 1943
1944 (1st E.S.) .....	March 1, 1944
1944 (2nd E.S.) .....	March 4, 1944
1945 .....	March 9, 1945
1946 (1st E.S.) .....	March 7, 1946
1947 .....	March 7, 1947
1949 .....	March 4, 1949
1950 (E.S.) .....	February 25, 1950
1951 .....	March 12, 1951
1952 (E.S.) .....	January 16, 1952
1953 .....	March 6, 1953

1955 .....	March 5, 1955
1957 .....	March 16, 1957
1959 .....	March 9, 1959
1961 .....	March 2, 1961
1961 (1st E.S.) .....	August 4, 1961
1963 .....	March 19, 1963
1964 (E.S.) .....	August 1, 1964
1965 .....	March 18, 1965
1965 (1st E.S.) .....	March 25, 1965
1966 (2nd E.S.) .....	March 5, 1966
1966 (3rd E.S.) .....	March 17, 1966
1967 .....	March 31, 1967
1967 (1st E.S.) .....	June 23, 1967
1968 (2nd E.S.) .....	February 9, 1968
1969 .....	March 27, 1969
1970 .....	March 7, 1970
1971 .....	March 19, 1971
1971 (E.S.) .....	April 8, 1971
1972 .....	March 25, 1972
1973 .....	March 13, 1973
1974 .....	March 30, 1974
1975 .....	March 22, 1975
1976 .....	March 19, 1976
1977 .....	March 21, 1977
1978 .....	March 18, 1978
1979 .....	March 26, 1979
1980 .....	March 31, 1980
1981 .....	March 27, 1981
1981 (E.S.) .....	July 21, 1981
1982 .....	March 24, 1982
1983 .....	April 14, 1983
1983 (E.S.) .....	May 11, 1983
1984 .....	March 31, 1984
1985 .....	March 13, 1985
1986 .....	March 28, 1986
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1992 (E.S.) .....	July 28, 1992
1993 .....	March 27, 1993
1994 .....	April 1, 1994
1995 .....	March 17, 1995
1996 .....	March 15, 1996
1997 .....	March 19, 1997
1998 .....	March 23, 1998
1999 .....	March 19, 1999

2000 .....	April 5, 2000
2001 .....	March 30, 2001
2002 .....	March 15, 2002
2003 .....	May 3, 2003
2004 .....	March 20, 2004
2005 .....	April 6, 2005
2006 .....	April 11, 2006
2006 (E.S) .....	August 25, 2006
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# **TITLE 38**

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**38-101. Definitions.** — As used in this chapter, the following terms are defined as follows:

(a) "Forest land" means any land which has upon it sufficient brush or flammable forest growth of any kind or size, living or dead, standing or down, including debris or growth following a fire or removal of forest products, to constitute a fire menace to life (including animal) or property.

(b) "Range land" means any land which is not cultivated and which has upon it native grasses or other forage plants making it best suited for grazing of domestic and wild animals and which land is adjacent to or intermingled with forest land.

(c) "Person" shall mean and include any person or persons, and any corporation, firm or other entity.

(d) "Everyone" or "anyone" shall mean any and all person or persons, corporations, firms, or other entities.

(e) "State" shall mean the state of Idaho.

(f) "Board" shall mean the state board of land commissioners.

(g) "State forester" as used in this chapter and wherever else it is used in the Idaho Code, shall mean the director of the department of lands or his duly authorized delegates or employees, including fire wardens and deputy fire wardens.

(h) "Fire warden" or "forest warden" shall mean duly appointed fire wardens or their deputies.

(i) "Forest products" shall mean any ties, logs, poles, posts, cordwood, pulpwood or other timber products.

(j) "Slashing areas" shall mean areas upon which, after cutting of the trees or brush preparatory to clearing, or after the cutting of any forest products, sufficient flammable material remains upon the ground as a result of such operations to constitute a menace to life or property.

(k) "Slash" or "slashing" shall mean brush, severed limbs, poles, tops and/or other waste material incident to such cutting or to the clearing of land, which are four (4) inches and under in diameter.

(l) "Forest fire" as used in this chapter means any fire burning uncontrolled on any land covered wholly or in part by timber and/or other potential forest products, slash, brush, or other flammable vegetation.

(m) "Range fire" means any fire burning uncontrolled on any range land.

(n) Whenever the term "state cooperative board of forestry" is used in any other section of the Idaho Code, it shall be construed to mean the state board of land commissioners.

(o) "Administrator" means the head of a division organized within the department of lands.

(p) "Community forestry" or "urban forestry" means the management of the trees and associated vegetation in rural and urban communities.



(q) "Improved lot or parcel" means forest land upon which a residential structure exists as determined by the department. In making such determination, the department may consult with the county assessor.

#### History.

1972, ch. 401, § 2, p. 1164; am. 1974, ch. 17,

§ 3, p. 308; am. 1992, ch. 258, § 1, p. 749; am. 1993, ch. 93, § 1, p. 221.

### STATUTORY NOTES

#### Prior Laws.

Original sections 38-101, 38-102, which originally comprised S.L. 1925, ch. 150, first and second paragraphs of § 1, p. 265; am. 1929, ch. 69, first and second paragraphs of § 1, p. 98; I.C.A., §§ 37-101, 37-102; am. 1943, ch. 156, § 1, p. 314 and thereafter I.C., §§ 38-101, 38-102 as repealed and reenacted by 1967, ch. 315, §§ 1, 2, p. 906, were repealed by S.L. 1972, ch. 40, § 1 and S.L. 1972, ch. 401, § 4.

Former sections 38-103 to 38-134, which comprised S.L. 1925, ch. 150, third and fourth pars. of § 1, §§ 2 to 22, 24 to 32, p. 265; am. 1929, ch. 69, third and fourth pars. of § 1, §§ 2 to 7, p. 98; I.C.A., §§ 37-103 to 37-125, 37-127 to 37-135, 37-139; am. 1933, ch. 35, § 1, p. 47; am. 1933, ch. 83, § 1, p. 133; am. 1935, ch. 35, § 1, p. 60; am. 1935, ch. 68, § 1, p. 122; am. 1937, ch. 199, § 1, p. 337; am. 1943, ch. 93, § 1, p. 188; am. 1943, ch. 156, §§ 2 to 5, p. 314; am. 1945, ch. 105, § 1, p. 158; am. 1947, ch. 138, § 1, p. 334; am. 1949, ch. 273, §§ 1, 2, p. 556; am. 1953, ch. 49, § 1, p. 66; am. 1955, ch. 132, § 1, p. 269; am. 1957, ch. 162, §§ 1 to 3, p. 293; am. 1959, ch. 22, § 1, p. 51; am. 1961, ch. 65, § 1, p. 93; am. 1961, ch. 218, § 1, p. 350; am. 1963, ch. 39, § 1, p. 187; am. 1963, ch. 162, § 1, p. 477; am. 1963, ch. 356, § 1, p. 1022; am. 1965, ch. 77, § 1, p. 125; am. 1967, ch. 315, §§ 3 to 10, p. 906; am. 1968 (2nd E. S.), ch. 14, § 2, p. 29; am. 1968 (2nd E. S.), ch. 18, § 1, p. 33; am. 1969, ch. 149, § 1, p. 474; am. 1969, ch. 304, § 1, p. 910; I.C., § 38-125A, as added by 1970, ch. 147, § 1, p. 442, were repealed by S.L. 1972, ch. 401, § 4, effective July 1, 1973.

#### Cross References.

Coniferous trees, bill of sale required for transportation, §§ 18-4627, 18-4628.

Defacing marks on lumber, § 18-4616.

Destruction of timber on state lands, §§ 18-7009, 18-7010.

Director of department of lands, § 58-105.

Director of the department of lands may delegate powers to state forest warden under act, § 38-403.

Firing timber or prairie lands a misdemeanor, § 18-7004.

Forest insects, pests and diseases, power of director of the department of lands to eradicate and destroy, § 38-602.

Forest practices act, § 38-1301 et seq.

Forest, wildlife and range experiment station to conduct cooperative investigation with director of the department of lands, § 38-703.

Loggers' liens, § 45-401 et seq.

Malicious destruction of lumber, § 18-7020.

Sale of timber on state lands, § 58-401 et seq.

State board of land commissioners, Idaho Const., Art. IX, § 7 and § 58-101 et seq.

State forests and state parks, state board of land commissioners authorized to acquire or lease land for development of, § 58-501 et seq.

Watershed protection and flood prevention duties, § 42-3602 et seq.

#### Compiler's Notes.

Section 1 of S.L. 1972, ch. 401, read: "This act is a comprehensive recodification of chapter 1, title 38, Idaho Code, the Idaho Forestry Act."

The words enclosed in parentheses so appeared in the law as enacted.

### RESEARCH REFERENCES

**C.J.S.** — 98 C.J.S., Woods and Forests, § 1 et seq.

**38-102. Duties of director of department of lands.** — It shall be the duty of the director of the department of lands to execute the provisions of this chapter, and the rules and regulations of the state board of land commissioners pertaining to forest and watershed protection; to represent the state in cooperation with forest owners and others in forest protection work; to further the enforcement of laws for the protection and preservation

of forests; to collect and disseminate information upon forest resources and forest conditions; to promote community forest management on public and private lands; to report to the state board of land commissioners concerning the improvement and management of the state's forest holdings; to advise farmers and others concerning the development and management of woodlots and forest tracts; and to make such investigation and take such steps as shall lead to the adoption and execution of a comprehensive state forest policy in the interest of the entire state. The director shall furnish such information, make such recommendations, and perform such duties as may be required of him by the state board of land commissioners. The director may delegate all or any portion of his duties or responsibilities provided under this chapter to one (1) or more division heads or employees of the department of lands.

**History.**

1972, ch. 401, § 2, p. 1164; am. 1974, ch. 17,  
§ 4, p. 308; am. 1992, ch. 258, § 2, p. 749.

**STATUTORY NOTES****Cross References.**

Director of department of lands, § 58-105.  
State board of land commissioners, art. IX,  
§ 7, Idaho Const. and § 58-101 et seq.  
Youth conservation project, § 56-601 et seq.

**Prior Laws.**

Former § 38-102 was repealed. See Prior  
Laws, § 38-101.

**RESEARCH REFERENCES**

C.J.S. — 98 C.J.S., Woods and Forests,  
§§ 14, 15.

**38-103. Assistants.** — The director of the department of lands is authorized to employ such clerical, administrative and professional staff and such other help and assistants and acquire such facilities and incur such expenses as the state board of land commissioners may determine to be proper and necessary, all of which shall be paid out of the appropriations from the general fund or special funds provided for this purpose in the budget for the department of lands.

**History.**

1972, ch. 401, § 2, p. 1164; am. 1974, ch. 17,  
§ 5, p. 308.

**STATUTORY NOTES****Cross References.**

Director of department of lands, § 58-105.  
State board of land commissioners, art. IX,  
§ 7, Idaho Const. and § 58-101 et seq.

**Prior Laws.**

Former § 38-103 was repealed. See Prior  
Laws, § 38-101.

**Compiler's Notes.**

The name of the department of public lands at the end of this section has been changed to the department of lands on the authority of S.L. 1974, ch. 286, § 1 and S.L. 1974, ch. 17, § 39 (§ 58-101).



**38-104. Cooperation with other agencies — Restrictions. —**

(1) The director of the department of lands, in executing the provisions of this chapter, insofar as it relates to privately owned forest or range land, shall have authority to cooperate with federal, county, state, municipal and private agencies, all voluntary forest or range land protective associations now organized and which may from time to time hereafter be organized within the state of Idaho, and he shall have authority to:

a. Enter into agreements with the federal government, under such terms as he deems advisable or as may be provided by law, and renew, revise or terminate such agreements for the purpose of furnishing, operating and maintaining a protective system for the detection, prevention and suppression of forest or range fires; provided, that the costs and expenses incurred, accruing and contracted for by the terms of said agreements shall be paid from the appropriations or funds available for the protection of forest land. Funds collected from owners of forest lands shall be used only for the benefit of forest lands within the forest protective district from which collected.

b. Enter into agreements with any county or municipality on such terms and under such conditions as he may deem wise, and subject to the approval of the board, for the detection, prevention or suppression of forest fires on any lands within said county or municipality, or for the protection and forest management of any lands over which such county or municipality has jurisdiction, or for reforestation or afforestation of lands within said county or municipality, whenever any county or municipality shall have made any appropriations therefor.

c. Subject to the provisions of subsection (d) hereof, enter into agreements, with the approval of the board, with any person, firm, organization, association, corporation, state board, officer or agency owning and/or controlling any forest or range land, or whose function, desire and/or duty it is to protect any forest or range land from forest or range fires, under such terms and conditions as he deems advisable or as may be required by law, and renew, revise or terminate such agreements, for the purpose of furnishing, operating and maintaining, a protective system for the detection, prevention and suppression of forest or range fires in forest protective districts; provided, that no agreements entered into under authority of this section shall provide that the same shall pay more than its pro rata share as provided in section 38-114, Idaho Code, and provided, further, that the costs and expenses incurred, accruing or contracted for by the terms of said agreement shall be paid from appropriations or funds available for the protection of forest or range lands from forest or range land fires, or from moneys recovered from persons held responsible under this chapter for the payment thereof.

d. The director shall not contract with any timber protective association unless such association limits its lobbying activities only to securing the passage, repeal, or amendment of laws that directly concern the individual association and its program of conservation and fire protection, nor shall he contract with any timber protective association whose bylaws or contracts do not provide for the dissolution of such associations by the consent or resolution of its members or members whose total acreage

within such association constitutes at least sixty-seven per cent (67%) of the total acreage within the association's jurisdiction. Upon dissolution the association shall provide for the distribution of the association's assets to a qualified successor organization in accordance with section 501(c)(4) of the United States internal revenue code. An association may be incorporated or unincorporated. For the purposes of this chapter, the state shall be deemed a member of such association if it has entered into an agreement therewith.

(2) As a condition of any contract of the state with any timber protective association, the liability of the state is limited to the amount established by the laws of the state governing the contract or a tort liability of the state. As a further condition of any contract of an association with the state, no association shall settle or compromise any claim or suit against it without prior approval of the state land board.

(3) Prior to state participation or prior to continued state participation as a member of any timber protective association the director shall annually review and inspect the association for the following:

- a. The governing and managing structure of the association;
- b. The condition of equipment and its proposed use;
- c. The adequacy of liability insurance; and,
- d. The training of all association personnel.

The director shall report his findings and make recommendations to the state land board. If the state land board determines that the association is unable to perform its proper duties or is unsuitable for continued state membership the state land board shall give the association one (1) year in which to make the necessary improvements and if this is not done within one (1) year then the land board shall cause the state to withdraw its membership from the association or take the necessary steps to dissolve the association.

#### **History.**

1972, ch. 401, § 2, p. 1164; am. 1974, ch. 17,

§ 6, p. 308; am. 1977, ch. 34, § 1, p. 59; am. 1982, ch. 318, § 1, p. 792.

### **STATUTORY NOTES**

#### **Cross References.**

Director of department of lands, § 58-105.

State board of land commissioners, Idaho Const., Art. IX, § 7 and § 58-101 et seq.

#### **Prior Laws.**

Former § 38-104 was repealed. See Prior Laws, § 38-101.

#### **Federal References.**

Section 501(c)(4) of the United States internal revenue code, referred to in subdivision (1)d, is compiled as 26 USCS § 501(c)(4).

#### **Effective Dates.**

Section 2 of S.L. 1982, ch. 318 declared an emergency. Approved April 1, 1982.

**38-104A. Nonprofit timber protective associations — Restrictions on liability.** — (1) "Nonprofit timber protective association" means a nonprofit corporation, or nonprofit unincorporated association, that has entered into a contract for the detection, prevention or suppression of forest and range fires with the state of Idaho or any agency of the state of Idaho pursuant to title 38, Idaho Code.

(2) A nonprofit timber protective association and its employees, while acting within the scope of their employment, and while performing a

contract with the state of Idaho or any agency of the state of Idaho, without malice or criminal intent, shall not be liable for any claim for bodily or personal injury, death, property damage or other loss that arises out of an act or omission of an employee based upon the exercise or performance, or the failure to exercise or perform, a discretionary function or duty on the part of the nonprofit timber protective association or its employee, whether or not the discretion is abused.

(3) A nonprofit timber protective association and its employees, while acting within the scope of their employment, and while performing a contract with the state of Idaho or any agency of the state of Idaho, shall not be liable for punitive damages on any claim for bodily or personal injury, death, property damage or other loss.

(4) The combined aggregate liability of a nonprofit timber protective association and its employees for damages, costs and attorney's fees for bodily or personal injury, death, property damage, or other loss as a result of any one (1) accident, arising out of the performance of a contract with the state of Idaho or any agency of the state of Idaho, regardless of the number of persons injured, the number of claimants, or the number of properties damaged, shall not exceed the sum of five hundred thousand dollars (\$500,000), unless the nonprofit timber protective association has valid and collectible liability insurance coverage in excess of five hundred thousand dollars (\$500,000), in which event the combined aggregate liability shall be the remaining available proceeds of such insurance.

**History.**

I.C., § 38-104A, as added by 2006, ch. 153,  
§ 1, p. 468.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 2006, ch. 153 declared an emergency. Approved March 22, 2006.

**38-105. State forest and range lands — Application of chapters. —**

The provisions of this chapter shall be applicable to the forest and range lands belonging to the state with the same force and effect as they apply to privately owned forest and range lands within the state; except that for the protection of state-owned range lands, the state board of land commissioners may enter into agreements or otherwise provide for a reasonable arrangement assuring the timely suppression of fires on or threatening state-owned range lands whether or not said lands are adjacent to or intermingled with forest lands.

**History.**

1972, ch. 401, § 2, p. 1164; am. 1988, ch. 208, § 1, p. 390.



## STATUTORY NOTES

**Cross References.**

State board of land commissioners, Idaho Const., Art. IX, § 7 and § 58-101 et seq.

**Prior Laws.**

Former § 38-105 was repealed. See Prior Laws, § 38-101.

**38-106. Hearing of aggrieved landowner.** — Any owner or owners or the accredited representative of any owner or owners of forest lands subject to the provisions of this chapter, shall upon request, be granted a hearing before the board, or an appropriate executive committee thereof, on any subject pertaining to the activities of the director of the department of lands or of said board affecting his or their property: provided, that no request for a hearing before the board shall have the effect of suspending the operations of the director of the department of lands or any fire warden undertaken pursuant to the provisions of this chapter, but, upon such hearing, the board may terminate such operations if found unreasonable.

**History.**

1972, ch. 401, § 2, p. 1164.

## STATUTORY NOTES

**Cross References.**

Director of department of lands, § 58-105.

**Prior Laws.**

Former § 38-106 was repealed. See Prior Laws, § 38-101.

**Compiler's Notes.**

The name of the state forester has been changed to director of the department of lands on authority of S.L. 1974, ch. 286, § 1 and S.L. 1974, ch. 17, § 3 (§ 38-101(g)).

**38-107. Uncontrolled fires a nuisance — Abatement — Civil liability.** — Any forest or range fire burning out of control or without adequate and proper precautions having been taken to prevent its spread, is hereby declared a public nuisance, by reason of its menace to life and/or property. Any person responsible through his conduct, acts and/or control of property or operations for either the starting or the existence of such fire is hereby required to make a reasonable effort to control or extinguish it immediately, without awaiting instructions from the director of the department of lands or a fire warden. The director of the department of lands or any fire warden may summarily abate the nuisance thus constituted by controlling or extinguishing such fire and the person wilfully or negligently responsible for the starting or existence of such fire shall be liable for the costs incurred by the state or its authorized agencies in controlling or extinguishing the same. The amount of such costs shall be recovered by a civil action prosecuted in the name of the state of Idaho and any amounts recovered shall be paid to the state treasurer for deposit to the forest protection fund. Civil liability provided for herein shall be exclusive of and in addition to any criminal penalties otherwise provided.

**History.**

1972, ch. 401, § 2, p. 1164.

## STATUTORY NOTES

**Cross References.**

Director of department of lands, § 58-105.  
Forest protection fund, § 38-129.

**Prior Laws.**

Former § 38-107 was repealed. See Prior Laws, § 38-101.

**Compiler's Notes.**

The name of the state forester has been changed to director of the department of lands on authority of S.L. 1974, ch. 286, § 1 and S.L. 1974, ch. 17, § 3 (§ 38-101(g)).

**38-108. Protection by woodworking and wood product plants. —** Any saw mill, planing mill, shingle mill or other woodworking plant, or plant manufacturing wood products, operating in or near forest land, and burning refuse wood material outside of and/or adjacent to such mill or plant, shall enclose the area where such refuse is burned with a fireproof wall at least twelve feet (12') in height and in diameter at least two feet (2') greater than the longest refuse or wood material so burned by such mill or plant to prevent the escape or spread of fire therefrom; provided, however, that such mills or plants having adequately constructed and properly maintained burners, or those whose burners of any description are not so located that fire does or can escape or spread therefrom and endanger the lives and/or property of others, shall be exempt from the provisions of this section; and provided, further, that the requirements of this section shall constitute the minimum requirements for public safety, and that nothing herein contained shall be construed to prevent the operators of such mill or plant from being required to increase such protection to make the same adequate to the requirements of public safety; and provided, further, that the preceding proviso shall not be construed to require the use of a hooded burner or permanent structure.

**History.**

1972, ch. 401, § 2, p. 1164.

## STATUTORY NOTES

**Cross References.**

Forest land defined, § 38-101.

**Prior Laws.**

Former § 38-108 was repealed. See Prior Laws, § 38-101.

**38-109. Penalty for violation — Injunction — Suspension of restrictions. —** Refusal or neglect to comply with the provisions of section 38-108, Idaho Code, shall be deemed a petty misdemeanor, and any person refusing or neglecting to comply therewith may be enjoined from further use of such mill or plant until proper equipment is installed; provided, that the director of the department of lands may suspend the restrictions of section 38-108, Idaho Code, when and where he deems public safety so permits.

**History.**

1972, ch. 401, § 2, p. 1164.

## STATUTORY NOTES

**Cross References.**

Director of department of lands, § 58-105.  
Penalty for misdemeanor when not otherwise provided, § 18-113.

**Prior Laws.**

Former § 38-109 was repealed. See Prior Laws, § 38-101.

**Compiler's Notes.**

The name of the state forester has been changed to director of the department of lands on authority of S.L. 1974, ch. 286, § 1 and S.L. 1974, ch. 17, § 3 (§ 38-101(g)).

**38-110. Forest protective districts — Fire wardens.** — The director of the department of lands of the state of Idaho shall divide the state into districts to be known and designated as forest protective districts, having due regard in establishing the boundaries thereof, to the adequate, effective and economical protection of forest and range lands therein; he shall appoint one (1) fire warden for each of the districts of the state on the recommendation of the protection agency representing the forest land owners in each such district, who shall at all times be responsible to and under the direction and control of the director of the department of lands and shall perform such duties at such times and places as he shall direct. Fire wardens shall hold office until their appointment is revoked and the director of the department of lands may revoke the same at any time. The fire warden so appointed may, subject to approval by the director of the department of lands, appoint deputy fire wardens within their respective districts and such appointments may be revoked at any time by the fire warden or director of the department of lands. All the officers provided for in this act shall have and exercise police powers while engaged in performing the duties of their respective offices.

**History.**

1972, ch. 401, § 2, p. 1164.

## STATUTORY NOTES

**Cross References.**

Director of department of lands, § 58-105.  
Forest lands defined, § 38-101.  
Forest, wildlife and range experiment station to conduct investigations and research into protection against fire, § 38-706.  
Publication of notices generally, § 60-109.  
Wildlife laws, arrest of violators, authorized, § 36-2301.

**Prior Laws.**

Former § 38-110 was repealed. See Prior Laws, § 38-101.

**Compiler's Notes.**

The name of the state forester has been changed to director of the department of lands on authority of S.L. 1974, ch. 286, § 1 and S.L. 1974, ch. 17, § 3 (§ 38-101(g)).

The words "this act" in the last sentence refer to S.L. 1972, ch. 401, which is compiled as §§ 38-101 to 38-104, 38-105 to 38-131, 38-132, and 38-133. Probably the reference should be to "this chapter", being chapter 1, title 38, Idaho Code.

## RESEARCH REFERENCES

C.J.S. — 98 C.J.S., Woods and Forests, § 5,  
14.

**38-111. Protection by owner — Assessments — Budget of protective districts.** — Every owner of forest lands in the state shall furnish or provide therefor, throughout the closed season, protection against the starting, existence or spread of fires thereon, or therefrom, in conformity



with reasonable rules and standards for adequate protection, to be established by the state board of land commissioners. An owner of forest lands who maintains a membership in good standing in a forest protective association operating under agreement with the state board of land commissioners, which association maintains a standard of protection approved by said board and who pays the assessments to the association in the amounts required in this section, shall be deemed to have fully complied herewith. In the event the owner of any forest land shall neglect or fail to furnish the protection required in this section, the director of the department of lands shall provide such patrol and protection therefor at actual cost to the owner of forest lands. For private owners of forest lands whose total acres of forest lands are twenty-six (26) acres or more, the state board of land commissioners shall establish this cost not to exceed sixty-five cents (65¢) an acre per year. For private owners of forest lands whose total acres of forest lands are twenty-five (25) acres or fewer, the minimum assessment per year shall be equal to the per acre cost multiplied by twenty-five (25).

In addition to any other assessment prescribed in this chapter, the state board of land commissioners shall establish a surcharge to be levied and assessed in an amount not to exceed forty dollars (\$40.00) for each improved lot or parcel to offset costs associated with wildfire preparedness.

There is hereby established in the state treasury a wildfire equipment replacement fund for the replacement of capital wildfire equipment. The department of lands shall determine reimbursement rates for all capital fire equipment used for activities other than fire preparedness. Reimbursement revenues shall be deposited in the wildfire equipment replacement fund. Additional moneys may be deposited into the wildfire equipment replacement fund from any other source.

In the event an assessment is made in an amount less than the maximum hereinbefore provided, and an actual loss occurs which exceeds the amount budgeted and for which assessments have been made, the director of the department of lands, with the approval of the board, may require an additional assessment to be made and paid, which together with the original assessment shall not exceed the maximum assessment set forth in this section. Such additional assessment shall be levied and collected in the same manner as herein provided for the collection of such original assessments. The liability provided in this section shall be calculated for each forest protection district or association separately, and shall be calculated solely upon the charges assignable to fire control or presuppression of fires within each district or association.

Each forest protective association actively engaged in forest protection under agreement with the state board of land commissioners shall each year prepare in detail, a budget of all estimated operating costs for the next fiscal year and shall submit this budget to the board for approval before August 31 of the current year.

Except for the provisions of section 38-122, Idaho Code, and cases of proven negligence by the landowner or his agent, no other charges or assessments for fire protection shall be made or assessed or collected from those forest landowners participating as provided herein.

**History.**

1972, ch. 401, § 2, p. 1164; am. 1976, ch. 36, § 1, p. 77; am. 1981, ch. 34, § 1, p. 53; am. 1987, ch. 192, § 1, p. 390; am. 1993, ch. 93,

§ 2, p. 221; am. 2003, ch. 79, § 1, p. 252; am. 2009, ch. 36, § 1, p. 106; am. 2010, ch. 66, § 1, p. 114.

**STATUTORY NOTES****Cross References.**

Closed season for fires, § 38-115.

Director of department of lands, § 58-105.

Enforcement of loggers' liens, § 45-401 et seq.

Forest land defined, § 38-101.

Reduction of fire hazards under supervision of director of the department of lands, § 38-401 et seq.

State board of land commissioners, Idaho Const., Art. IX, § 7 and § 58-101 et seq.

**Prior Laws.**

Former § 38-111 was repealed. See Prior Laws, § 38-101.

**Amendments.**

The 2009 amendment, by ch. 36, in the next-to-last sentence in the first paragraph, substituted "sixty-five cents" for "sixty cents";

in the second paragraph, substituted "not to exceed forty dollars (\$40.00) for each improved lot or parcel to offset costs associated with wildfire preparedness" for "not to exceed twenty dollars (\$20.00) for each improved lot or parcel, to defray the cost of fire suppression on forest land caused by the existence of the improvements"; and added the third paragraph.

The 2010 amendment, by ch. 66, in the last paragraph, substituted "fiscal year" for "calendar year", and substituted "August 31" for "June 30".

**Effective Dates.**

Section 2 of S.L. 1976, ch. 36 provided the act should be in full force and effect on and after January 1, 1977.

**JUDICIAL DECISIONS****DECISIONS UNDER PRIOR LAW****Constitutionality.**

Charges levied against land under former provisions providing for charges for fire protection by the state where the owner neglected to furnish such protection did not constitute double taxation. *Chambers v. McCollum*, 47 Idaho 74, 272 P. 707 (1928).

Provision of former law authorizing state forester (now director of the department of lands) to determine whether or not owner of forest land has provided adequate protection

against starting, existence, and spread of fires was not denial of due process. *Chambers v. McCollum*, 47 Idaho 74, 272 P. 707 (1928).

Provision of former law permitting state forester (now director of the department of lands) to charge forest lands with actual cost of fire protection rendered in case owner fails to provide protection was not denial of due process. *Chambers v. McCollum*, 47 Idaho 74, 272 P. 707 (1928).

**RESEARCH REFERENCES**

C.J.S. — 98 C.J.S., Woods and Forests, § 5.

**38-112. Charges a lien — Method of collection.** — Any amounts due under the preceding section and approved by the board for that purpose shall be a lien on the property protected, and shall be collected as follows:

On or before the first Monday in July of each year, the association secretary shall determine the names of all owners of forest lands within the boundaries of the particular forest protective association who have failed to provide the forest fire protection for their lands required by this act, together with the description of such lands and the acreage thereof and calculate the total amount due hereunder from each such owner for such forest fire protection which shall not exceed the maximum hereinbefore specified. The association secretary shall deliver such information to the



director of the department of lands not less than ten (10) days before the first Monday in August of each year.

By the first Monday in August of each year, the director of the department of lands shall have prepared a list of all amounts charged under this section against property protected, and upon request received from any owner thereof, shall render the latter a statement of the sum so due from such owner; upon further request made to said director within ten (10) days following said first Monday in August, any such owner shall be granted a hearing before the board on or before the last Monday in August. Said board shall then either approve or revise all sums to be collected, and the director of the department of lands shall certify each and every current amount to the auditor of the county or counties in which such property is situated not later than the first Monday in September following. Upon receiving such certificate from the director of the department of lands showing the amounts due, the auditor shall extend the amounts so certified upon the county tax rolls covering such property, and such sums shall be collected in the same manner and at the same time and with like penalties as general state and county taxes upon the same property are collected. When collected, such sums shall immediately be paid into the forest protection fund to be applied by the director of the department of lands to expenses incurred, accrued and/or contracted for in carrying out the provisions of this section.

#### History.

1972, ch. 401, § 2, p. 1164.

### STATUTORY NOTES

#### Cross References.

Director of department of lands, § 58-105.

Fire warden defined, § 38-101.

Forest protection fund, § 38-129.

changed to director of the department of lands on authority of S.L. 1974, ch. 286, § 1 and S.L. 1974, ch. 17, § 3 (§ 38-101(g)).

#### Prior Laws.

Former § 38-112 was repealed. See Prior Laws, § 38-101.

The words "this act" refer to S.L. 1972, ch. 401, which is compiled as §§ 38-101 to 38-104, 38-105 to 38-131, 38-132, and 38-133. Probably the reference should be to "this chapter", being chapter 1, title 38, Idaho Code.

#### Compiler's Notes.

The name of the state forester has been

**38-113. Purchaser of forest products responsible for protection — Liens.** — When the owner of forest land shall have sold timber and/or other forest products or potential forest products thereon to another, retaining the land, the owner of the timber and/or other forest products or potential forest products shall be responsible for providing the protection required by section 38-111, Idaho Code, for that portion of the land covered by his uncut timber and/or other forest products or potential forest products and for the area he has cut over during the year up to the end of the closed season, and for any areas he has cut over without complying with the forest fire and slash disposal laws of the state, and if he fails, neglects or refuses to provide the protection required by section 38-111, Idaho Code, the director of the department of lands shall provide such patrol and protection at the cost per acre to said owner at the rates therein established. Any amounts due and unpaid for this purpose shall be a lien upon the remaining standing

timber and/or other forest products or potential forest products and upon the timber and/or other forest products theretofore cut and/or removed or remaining on the ground and may be collected through extension upon the tax rolls covering such property as in section 38-112, Idaho Code, provided for collection of similar liens upon forest land; provided, that if the director of the department of lands shall deem such property to be inadequate security, the lien, unless promptly paid on demand of the director of the department of lands, may be by him perfected and enforced as loggers' liens are perfected and enforced, or such amounts, together with any expenses rendered necessary, may be recoverable from the offender by a civil action for debt prosecuted in the name of the state of Idaho. Any recovery shall be paid to the state treasurer for deposit in the forest protection fund.

**History.**

1972, ch. 401, § 2, p. 1164.

**STATUTORY NOTES****Cross References.**

Director of department of lands, § 58-105.  
Forest protection fund, § 38-129.

**Prior Laws.**

Former § 38-113 was repealed. See Prior Laws, § 38-101.

**Compiler's Notes.**

The name of the state forester has been changed to director of the department of lands on authority of S.L. 1974, ch. 286, § 1 and S.L. 1974, ch. 17, § 3 (§ 38-101(g)).

**38-114. State to pay pro rata for fire protection — Deficiency warrants.** — The state shall bear and pay into the forest protection fund its pro rata share of the assessments provided for in section 38-111, Idaho Code, for fire protection to state lands and expenses incurred, accruing or contracted for within each forest protective district in enforcing and carrying out the provisions of this chapter and protecting the forest lands belonging to the state against damage, devastation or destruction by fire, in the proportion which such lands belonging to the state within each forest protective district of the state bear to the total area of forest land within such protective district, and the state shall be considered an owner of forest land within the meaning of that term as used in this chapter, and for the purposes thereof. The state board of land commissioners may authorize the issuance of deficiency warrants for the purpose of defraying such assessments, and when so authorized the state controller shall draw such deficiency warrants against the general fund. Such moneys as the state shall thus become liable for shall be paid as a part of the expenses of the state board of land commissioners out of appropriations which shall be made by the legislature for that purpose. In all appropriations hereafter made for expenses of said state board of land commissioners, account shall be taken of and provision made for this item of expense.

**History.**

1972, ch. 401, § 2, p. 1164; am. 1994, ch. 180, § 64, p. 420.



## STATUTORY NOTES

**Cross References.**

Forest protection fund, § 38-129.  
State board of land commissioners, Idaho Const., Art. IX, § 7 and § 58-101 et seq.  
State controller, § 67-1001 et seq.

**Prior Laws.**

Former § 38-114 was repealed. See Prior Laws, § 38-101.

**Effective Dates.**

Section 241 of S.L. 1994, ch. 180 provided

that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the names of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 64 of S.L. 1994, ch. 180 became effective January 2, 1995.

**38-115. Closed season for fires — Permits — Regulations — Extension of closed season — Suspension of permits — Penalty. —** The period from May 10 to October 20, inclusive, of each year shall be known as the closed season. During the closed season it shall be unlawful for any person to set or cause to be set a fire in any slashing area, or a fire to any stump or stumps, log or logs, down or standing timber or to set or cause to be set, a fire on any forest or range lands or dangerously near thereto, or in any field in any forest protective district, without having first procured a permit from the fire warden of the district, provided, that unless campfires have been prohibited during critical hazard periods, campfires may be set without permit provided there is compliance with the provisions of section 38-116, Idaho Code. Every permit shall prescribe the conditions upon which the permit is given, and contain rules and regulations governing the setting of fires and the prevention of the spread thereof to the property of another. At no time shall any fire be set when the wind is blowing to such an extent as to cause danger of the fire getting beyond the control of the person responsible for setting it, or without sufficient men, tools, supplies and firefighting equipment to control it, and the fire shall be kept under the control of the person responsible for setting it until it is out. The state board of land commissioners shall from time to time make all necessary rules and regulations governing the setting of fires on forest lands for both the closed and open season, and for their proper control and extinguishment. It shall be the duty of the director of the department of lands to prepare the proper form of permit to be used in carrying out the provisions of this section. The fire wardens shall at all times have authority to refuse permits and/or to revoke the same and to postpone their use when issued, when they shall deem it necessary so to do in the interest of public safety. Any permits obtained by misrepresentation shall be invalid.

In seasons, localities and under conditions of unusual fire danger, the director, with the advice of the fire warden of any protective district, shall have the power to extend the period of closed fire season in any district of the aforementioned districts to meet the particular fire hazard of each district, and when the safety of the public requires, change the closed season in any district by fixing inclusive dates other than those herein designated; close to entry therein by any person or party, the forest and range lands in any section of the state wherein a critical fire hazard exists, and may restrict or suspend travel on any road or trail leading into any such land, until a permit shall have secured from the fire warden of the forest protective district

wherein such lands are situated, and may also, without proclamation, suspend any and all permits or privileges authorized by this section and prohibit the setting of any campfires, and/or fire in forest and range land or dangerously near to such, or in fields in any forest protective district.

Any violation of the provisions of this section shall be deemed a misdemeanor.

**History.**

1972, ch. 401, § 2, p. 1164; am. 1974, ch. 17,  
§ 7, p. 308.

**STATUTORY NOTES****Cross References.**

Director of department of lands, § 58-105.

Fire warden defined, § 38-101.

Forest land defined, § 38-101.

Penalty for misdemeanor when not otherwise provided, § 18-113.

State board of land commissioners, Idaho Const., Art. IX, § 7 and § 58-101 et seq.

**Prior Laws.**

Former § 38-115 was repealed. See Prior Laws, § 38-101.

**JUDICIAL DECISIONS****DECISIONS UNDER PRIOR LAW****Constitutionality.**

Provisions against setting of described fires during closed season without permission from state forester (now director of the department

of lands) or fire warden is not denial of due process. *Chambers v. McCollum*, 47 Idaho 74, 272 P. 707 (1928).

**RESEARCH REFERENCES**

C.J.S. — 98 C.J.S., Woods and Forests, § 5.

**38-116. Campfires — Acts prohibited — Penalty.** — (1) No person shall during the closed season:

- a. Set or cause to be set a campfire upon forest or range lands without clearing the ground immediately around such fire free from material which will carry fire.
- b. Set or cause to be set a campfire against a stump, log, living or dead trees, or snag or dangerously near to any material which will carry fire.
- c. Set or cause to be set a campfire when the wind is blowing to such an extent as to cause danger of the campfire spreading.
- d. Set or cause to be set a campfire at a camping place incompatible with public safety and not in compliance with all the provisions of this chapter.
- e. Leave a campfire burning or unattended.
- f. Permit a campfire to spread.

(2) Violation of any of the provisions of this section shall be deemed a petty misdemeanor.

**History.**

1972, ch. 401, § 2, p. 1164.

## STATUTORY NOTES

**Cross References.**

Closed season for fires, § 38-115.  
 Fire warden defined, § 38-101.  
 Firing timber or prairie lands a misdemeanor, § 18-7004.  
 Forest land defined, § 38-101.  
 Penalty for misdemeanor when not otherwise provided, § 18-113.  
 Reduction of fire hazards under supervision

of director of the department of lands, § 38-401 et seq.

Throwing, depositing, or leaving lighted, flaming or glowing substance which may cause fire resulting in damage to forage on federal or state lands, § 18-7005.

**Prior Laws.**

Former § 38-116 was repealed. See Prior Laws, § 38-101.

**38-117. Throwing away lighted material — Penalty.** — It shall be unlawful during the closed season for any person to throw away any lighted tobacco, cigar, cigarette, match, firecracker, fireworks or other lighted material of any kind on any forest or range land of this state. Any person violating any of the provisions of this section shall be deemed guilty of a petty misdemeanor.

**History.**

1972, ch. 401, § 2, p. 1164.

## STATUTORY NOTES

**Cross References.**

Closed season for fires, § 38-115.  
 Firing timber or prairie lands a misdemeanor, § 18-7004.  
 Penalty for misdemeanor when not otherwise provided, § 18-113.  
 Throwing, depositing, or leaving lighted,

flaming or glowing substance which may cause fire resulting in damage to forage on federal or state lands, § 18-7005.

**Prior Laws.**

Former § 38-117 was repealed. See Prior Laws, § 38-101.

**38-118. Duty of railroads — Penalties.** — During the closed season everyone operating a common carrier railroad shall keep all right of way, station grounds and other operating property in, contiguous or adjacent to forest or range lands clear and free from all combustible and flammable material, matter or substances, except freight, express and mail supplies, structures, equipment and material necessary, usual or convenient for the construction, maintenance and/or operation of such railroad.

During the said closed season, no person operating or maintaining such a railroad shall permit any of his or its employees to leave a deposit of fire, live coals or hot ashes in the immediate vicinity of forest or range lands or of other lands liable to be overrun by fire.

All clearing by burning under the provisions of the section shall be in accordance with the provisions of this act applicable to the season during which said burning is done.

Refusal or neglect to comply with the provisions of this section shall be deemed a petty misdemeanor for each offense; provided, that the director of the department of lands, with the consent of the board, may suspend the restrictions of this section when and where he deems safety so permits. It is further provided, that in the absence of such suspension, and in case of refusal or neglect by the person at fault, after proper notice, to take the precautions against fire required by public safety and the provisions of this



act, the director of the department of lands, or district fire warden, acting with his consent, may have the work done to the extent that he deems requisite to public safety, and the costs thereof and the expense of any fire patrol rendered necessary by the offender's neglect, plus a penalty of ten per cent (10%) shall be recoverable from the offender by civil action, prosecuted in the name of the state of Idaho. Any recovery shall be paid to the state treasurer for deposit in the forest protection fund.

#### **History.**

1972, ch. 401, § 2, p. 1164.

### **STATUTORY NOTES**

#### **Cross References.**

Closed season for fires, § 38-115.

Director of department of lands, § 58-105.

Forest lands defined, § 38-101.

Forest protection fund, § 38-129.

Penalty for misdemeanor when not otherwise provided, § 18-113.

#### **Prior Laws.**

Former § 38-118 was repealed. See Prior Laws, § 38-101.

#### **Compiler's Notes.**

The name of the state forester has been changed to director of the department of lands on authority of S.L. 1974, ch. 286, § 1 and S.L. 1974, ch. 17, § 3 (§ 38-101(g)).

The words "this act" refer to S.L. 1972, ch. 401, which is compiled as §§ 38-101 to 38-104, 38-105 to 38-131, 38-132, and 38-133. Probably the reference should be to "this chapter", being chapter 1, title 38, Idaho Code.

### **JUDICIAL DECISIONS**

#### **DECISIONS UNDER PRIOR LAW**

##### **ANALYSIS**

Civil liability.

Construction of statute.

Evidence of condition at other places.

Evidence of other fires.

Fire off of right of way.

Negligence.

Third party setting fire.

#### **Civil Liability.**

Incurring the penalty provided in former law that provided that land on right of way adjacent to forest land was to be kept free from combustible material renders a railroad company civilly liable to one suffering damages. *Spokane Int'l Ry. v. United States*, 72 F.2d 440 (9th Cir. 1934).

#### **Construction of Statute.**

Former laws regulating railroad rights of way near forest land could not have been considered as imposing on defendant a standard of care impossible of fulfillment, but if there was nothing to show that grass or other inflammable materials could not have been removed either by burning them off the railroad right of way during the closed season under permit provided for in former law, or by plowing over the right of way, the evidence would have sufficed to justify a finding of the violation, thereby rendering the railroad com-

pany liable. *Spokane Int'l Ry. v. United States*, 72 F.2d 440 (9th Cir. 1934).

#### **Evidence of Condition at Other Places.**

Evidence of the condition of the railroad company's right of way in immediate proximity to the place of fire is admissible, such evidence showing the accumulation of combustible materials thereon. *Spokane Int'l Ry. v. United States*, 72 F.2d 440 (9th Cir. 1934).

#### **Evidence of Other Fires.**

Evidence of other fires occurring by combustible materials having been set on fire on defendant's right of way during the same summer but before the fire in question was admissible. *Spokane Int'l Ry. v. United States*, 72 F.2d 440 (9th Cir. 1934).

#### **Fire Off of Right of Way.**

Where a fire is set by sparks outside of the railroad company's right of way by another, former law providing for removal of combus-



tible material on railroad right of way near forest did not apply, unless it was shown in some way that the failure to comply with such former law contributed to the spread of the fire. *Spokane Int'l Ry. v. United States*, 72 F.2d 440 (9th Cir. 1934).

#### **Negligence.**

Railroad company's violation of law by permitting accumulation of combustible material on its right of way during closed season may constitute negligence and give rise to cause of

action if fire results. *Curoe v. Spokane & I.E.R.R.*, 32 Idaho 643, 186 P. 1101 (1920).

#### **Third Party Setting Fire.**

A railroad company is liable under the terms of this section when the fire is set to inflammable material accumulated on its right of way, and it is immaterial whether such material is set fire by the engine or other equipment of the railroad company or by the act of a third party. *Spokane Int'l Ry. v. United States*, 72 F.2d 440 (9th Cir. 1934).

### **RESEARCH REFERENCES**

**Am. Jur.** — 35 Am. Jur. 2d, Fires, §§ 8-11.  
**A.L.R.** — Liability of property owner for

damages from spread of accidental fire originating on property. 17 A.L.R.5th 547.

#### **38-119. Notification of fires by railroad employees — Penalty. —**

(1) During the closed season any employee of a railroad who, in the course of his employment, shall see a fire on or near the right of way, station grounds or other operating property of such railroad in, contiguous or adjacent to forest or range lands, shall immediately report such information to a fire warden. If such fire is on or spread from the railroad right of way, station grounds or other operating property of such railroad such employee or any other person in authority shall take all reasonable and prudent measures to control and extinguish such fire.

(2) A violation of any of the provisions of this or the next succeeding section shall be deemed a petty misdemeanor.

#### **History.**

1972, ch. 401, § 2, p. 1164.

### **STATUTORY NOTES**

#### **Cross References.**

Closed season for fires, § 38-115.

Fire warden defined, § 38-101.

Penalty for misdemeanor when not otherwise provided, § 18-113.

#### **Prior Laws.**

Former § 38-119 was repealed. See Prior Laws, § 38-101.

**38-120. Instruction to employees of railroads. —** It shall be the duty of every person operating a railroad through any forest protective district to keep employees fully instructed as to their duties relating to the reporting, control and prevention of forest or range fires as provided in this chapter.

#### **History.**

1972, ch. 401, § 2, p. 1164.

### **STATUTORY NOTES**

#### **Prior Laws.**

Former § 38-120 was repealed. See Prior Laws, § 38-101.

**38-121. Operation of engines without adequate protection — Penalty — Injunction.** — During the closed season it shall be unlawful for any person to use or operate on or near to forest or range land any steam or internal combustion engine which is not equipped and maintained in conformity with rules and regulations promulgated by the state board of land commissioners. Any person who shall fail to comply with such rules and regulations shall be guilty of a petty misdemeanor. Such person may also be enjoined from further use of such engine until it is equipped and maintained in conformity with such rules and regulations.

**History.**

1972, ch. 401, § 2, p. 1164.

**STATUTORY NOTES**

**Cross References.**

Closed season for fires, § 38-115.

Penalty for misdemeanor when not otherwise provided, § 18-113.

State board of land commissioners, Idaho Const., Art. IX, § 7 and § 58-101 et seq.

**Prior Laws.**

Former § 38-121 was repealed. See Prior Laws, § 38-101.

**JUDICIAL DECISIONS**

**Cited in:** State v. Nastoff, 124 Idaho 667, 862 P.2d 1089 (Ct. App. 1993).

**38-122. Protection by logging outfits — Fire suppression account — Liability for fire suppression costs — Penalty.** — (1) Everyone engaged, or about to engage, in the cutting of any forest product or potential forest product upon lands within the state of Idaho shall provide for the management and reduction of the fire hazard thus created or to be created by first securing a certificate of compliance from the director of the department of lands or his agent, said compliance to provide the option of entering into a fire hazard reduction agreement as provided in sections 38-401 through 38-410, Idaho Code, inclusive, or by posting a cash bond to the state of Idaho in such form and for such amount as may be prescribed by the director of the department of lands: provided, however, that the amount of the bond so prescribed shall not be in excess of the amount which such person would be required to pay under said sections 38-401 through 38-410, Idaho Code, inclusive, and that the bond shall be conditioned upon full and faithful compliance with all requirements under said sections 38-401 through 38-410, Idaho Code, inclusive, and the faithful reduction of such fire hazards in the manner prescribed by law. Provided further that the initial purchaser of ties, logs, posts, cordwood, pulpwood and other similar forest products which have been cut from lands within the state of Idaho shall make no such purchase from anyone not having a proper compliance under this section and formal acceptance of notification under subsection (2) of section 38-1306, Idaho Code. When a person elects to have hazard reduction money withheld in lieu of posting a cash bond, the purchaser of forest products shall withhold the money and said money so withheld in any one (1) calendar month shall be paid to the director of the department of lands

or his agent on or before the last day of the next calendar month. After sending such moneys to the director of the department of lands the purchaser shall not be further liable to the state of Idaho or to the person from whom the money was withheld. The director of the department of lands, upon receipt of the cash bond or transmittal of withheld money, shall promptly deposit the same with the state treasurer to be held in trust until the hazard has been reduced as required by law. Such hazard reduction shall be accomplished by the responsible party within the terms set forth in the certificate of compliance or such additional time as may be granted by the director of the department of lands, and upon completion thereof, the director of the department of lands or his agent shall issue a certificate of clearance, stating that all the terms of this section have been complied with. Such clearance shall constitute reason for the release of said hazard reduction money and payment to the person entitled thereto or release of the cash bond posted, except that: (a) three percent (3%) of the hazard reduction money or bond shall be deposited in a special account to be known as the fire suppression account, which is hereby created in the dedicated fund of the state treasury, and which shall be used by the department of lands to help pay the cost of suppressing forest fires; and (b) as determined by the state board of land commissioners, for harvest from private land, an additional amount, not to exceed three percent (3%) of the hazard reduction money or bond shall be deposited in the forest practices administration account established in section 38-135, Idaho Code, for the purpose of carrying out the provisions of the forest practices act, section 38-1301 et seq., Idaho Code. In the event the hazard reduction shall not be accomplished within said period of time, the money shall be released by the state treasurer on direction from the director of the department of lands less the three percent (3%) deduction specified for the fire suppression account and for harvest from private land, the deduction specified by the state board of land commissioners for the forest practices administration account, and credited to the "forest management account" for the management and reduction of any fire hazard and for the protection of forest resources as provided by section 38-408, Idaho Code.

(2) With the exception of cases of negligence on the part of the landowner, operator or their agents, liability for the cost of suppressing fires that originate on or pass through a slashing area shall remain with the state forester [director of the department of lands] if one of the following alternatives is executed by the landowner or operator: (a) the slashing area is covered by a certificate of compliance and all hazard money payments are current or a proper bond is in place; (b) the landowner or operator treats the slash in accordance with rules adopted by the state board of land commissioners that are in effect during the period covered by the certificate of compliance or approved extensions; or (c) the landowner or operator elects to enter into a contract with the state forester [director of the department of lands] for the management of the slash and liability of fire suppression costs in accordance with section 38-404, Idaho Code.

Should the landowner or operator choose not to treat the slash or not enter into a contract with the state forester [director of the department of lands] in accordance with section 38-404, Idaho Code, the landowner or



operator shall, in addition to forfeiting the bond provided for in section 38-122, Idaho Code, be subject to the provisions of section 38-123, Idaho Code, and his liability, if any, for fire suppression costs up to the limits set by the state forester [director of the department of lands], shall exist for a period of five (5) years following completion of the operation for all fires that originate in or pass through the landowner's or operator's slashing area, except that the landowner or operator may choose to pay an additional fee, to be determined by the director, upon payment of which the director will assume the liability for the cost of suppressing fires that originate in or pass through the slashing area.

(3) A violation of any of the provisions of this section shall be deemed a petty misdemeanor.

#### History.

1972, ch. 401, § 2, p. 1164; am. 1987, ch. 192, § 2, p. 390; am. 1989, ch. 154, § 1, p. 365; am. 1994, ch. 152, § 1, p. 347.

### STATUTORY NOTES

#### Cross References.

Director of department of lands, § 58-105.  
Fire warden defined, § 38-101.  
Penalty for misdemeanor when not otherwise provided, § 18-113.  
Slash defined, § 38-101.  
State board of land commissioners, Idaho Const., Art. IX, § 7 and § 58-101 et seq.

#### Compiler's Notes.

The bracketed insertions, in both paragraphs of subsection (2), were added by the compiler to update the name of the referenced state officer. See S.L. 1974, ch. 17, § 3, S.L. 1974, ch. 286, § 1, and § 38-101.

#### Prior Laws.

Former § 38-122 was repealed. See Prior Laws, § 38-101.

**38-123. Disposal of slash — Injunction against further cutting — Disposal at expense of owner — Lien and enforcement — Orders.** — In the event one responsible therefor shall fail, refuse or neglect to properly dispose of slash in accordance with the requirements of section 38-122, Idaho Code, and such person responsible therefor is engaged or is about to engage, either for himself or for another, in cutting timber or other forest products, and thereby creating a fire hazard anywhere within the state, he may be enjoined from cutting such timber or other forest products and thereby creating a fire hazard until he shall have complied with the provisions of section 38-122, Idaho Code. Such injunction proceedings may be instituted by the director of the department of lands as plaintiff and the court may in its discretion grant a temporary injunction. In any such proceedings no bond shall be required of the plaintiff and such a proceeding shall be handled in any court by the judge thereof with expedition.

If one responsible therefor has for any reason failed to comply with section 38-122, Idaho Code, and has without such compliance cut timber or other forest products, and shall fail, refuse or neglect to properly dispose of slash for a period of thirty (30) days after being notified so to do by the director of the department of lands or the fire warden of the forest protective district within which such slash has accumulated, the director of the department of lands, or the fire warden, may, if he deems it advisable, complete, direct or authorize the disposal of such slash at the expense of the owner of the timber or other forest products cut or produced from the land upon which such fire hazard remains undisposed of as aforesaid.

The cost and expense of such disposal, plus twenty per cent (20%) of the cost and expense of such disposal as a penalty, shall constitute a prior lien upon the timber and/or other forest products so cut or produced from such land. If payment of such cost and penalty be not made within ten (10) days after demand in writing, the director of the department of lands shall file for record with the county recorder of the county in which such timber or other forest products were cut, or, if the same have been removed to another county, then in such county, a notice of lien upon any and all forest products cut from the area of slash undisposed of as aforesaid, and such lien shall also attach to all identifiable processed products thereof, and the perfection of such lien rights shall as nearly as practicable be in conformity with the provisions of section 45-407, Idaho Code, so far as the same is applicable, and duly verified as therein provided. Any claims of lien recorded as herein provided shall be released in writing by the director of the department of lands upon payment of the cost and penalty herein provided. After the filing of notice of lien, any purchaser or purchasers of any of such forest products who have disposed of the same or who shall have so mingled such forest products or the processed products thereof with other property as to prevent identification of such forest products, and thereby prevent the sale of any such products in such foreclosure proceedings, shall be liable for the full amount of the judgment recovered, provided such purchaser is made a party defendant in the suit for the foreclosure of lien. The proceedings for the enforcement of said lien shall conform as nearly as may be to the proceedings provided by law for the enforcement of loggers' lien, or the amount of such cost and penalty may be recovered by a civil action for debt, prosecuted in the name of the state of Idaho, and payable to the state treasurer for deposit in the forest protection fund.

The director of the department of lands shall not file for record any lien against the property of any person who has been issued a certificate of clearance in accordance with section 38-122, Idaho Code, covering such property.

All orders and directions issued by the director of the department of lands, or any fire warden, as required or authorized by this section and section 38-122, Idaho Code, shall be in writing and made in triplicate, the original of which shall be sent by registered mail or delivered by personal service to the person to receive such order, permits or directions; one (1) copy shall be filed in the office of the director of the department of lands; and one (1) copy shall be filed in the district warden's file.

**History.**

1972, ch. 401, § 2, p. 1164; am. 1987, ch. 192, § 3, p. 390.

**STATUTORY NOTES****Cross References.**

Director of department of lands, § 58-105.

Director of the department of lands may contract with owners and assume responsibility

for reduction of fire hazards, § 38-404.

Enforcement of loggers' liens, § 45-401 et seq.

Forest protection fund, § 38-129.



Slash defined, § 38-101.

**Prior Laws.**

Former § 38-123 was repealed. See Prior Laws, § 38-101.

## JUDICIAL DECISIONS

### DECISIONS UNDER PRIOR LAW

#### ANALYSIS

Construction.  
Validity of lien.  
Waiver.

**Construction.**

The language of former lien statutes in regard to timber cut into logs and removal of slash did not require that the lienor assert his lien against any particular parcel or parcels of lumber. *Diamond Nat'l Corp. v. Lee*, 333 F.2d 517 (9th Cir. 1964).

**Validity of Lien.**

Substantial evidence supported referee's finding that the state's lien against lumber company for the cost of slash disposal on the logged-off premises was not invalid, although

another company might be responsible for the cost of the burning of the slash. *Diamond Nat'l Corp. v. Lee*, 333 F.2d 517 (9th Cir. 1964).

**Waiver.**

Where state claimed a lien against non-warehoused logs and lumber, but not against remainder of the lumber on the debtor's premises, such was not a waiver of the right to collect the entire sum due. *Diamond Nat'l Corp. v. Lee*, 333 F.2d 517 (9th Cir. 1964).

**38-124. Precautions in disposal of slash — Separate offenses — Penalty.** — Everyone making disposal of slash on forest land as provided for in this chapter shall use care to prevent fire from spreading to other forest land or the creation of further fire hazard by damage to timber growth left standing, and shall have sufficient men, tools, supplies and firefighting equipment on hand for that purpose, and when the burning has been completed, or when ordered by the fire warden, shall cause the fire to be totally extinguished without delay. Disposal of slash under the terms of this chapter shall be in accordance with the law requiring burning permits during the closed season.

Violation of any of the provisions of this chapter on any legal subdivision, shall constitute a separate and distinct offense and shall be deemed a misdemeanor.

**History.**

1972, ch. 401, § 2, p. 1164.

## STATUTORY NOTES

**Cross References.**

Closed season for fires, § 38-115.

Fire warden defined, § 38-101.

Penalty for misdemeanor when not otherwise provided, § 18-113.

Reduction of fire hazards under supervision

of director of the department of lands, § 38-401 et seq.

Slash defined, § 38-101.

**Prior Laws.**

Former § 38-124 was repealed. See Prior Laws, § 38-101.

**RESEARCH REFERENCES**

**A.L.R.** — Liability for spread of fire intentionally set for lawful purpose. 25 A.L.R.5th 391.

**38-125. Clearing rights of way — Precaution in clearing — Application to public work — Penalty — Injunction.** — Everyone clearing right of way for any railroad, public or private highway or road, public trail, public utility, logging road, trail, ditch, dike, pipe line or wire line, or any other transmission or transportation utility right of way, shall safely dispose of all refuse timber, brush, slash or debris cut for such clearing or resulting from the cutting of material for the construction of such right of way. Said piling and burning shall be done as rapidly as cutting and clearing progresses; provided, that upon application to the director of the department of lands, he may grant a permit extending the time within which such burning must be done; provided, further, that if such work be done during the closed season it must be done in compliance with all the provisions of this chapter relating to burning permits during the closed season.

The provisions of this section shall apply to all clearing of rights of way on behalf of the state, county, highway districts and road districts, whether the work be done by day labor, or by contract, and unless unavoidable emergency prevents, provisions shall be made by the proper officials conducting, directing, or letting said work, for withholding until it is complete, a sufficient portion of the payment therefor to insure compliance with this chapter.

Violation of any provisions of this section shall be deemed a misdemeanor.

In addition to the penalty herein provided, the offender may be enjoined at the instance of the director of the department of lands, or of the fire warden of the district, from proceeding with such work until the provisions of this section shall have been complied with; and, upon application of the director of the department of lands, or of the fire warden of the district, to any court of competent jurisdiction, a writ of mandate shall issue compelling the offender to fully comply with the provisions hereof.

**History.**

1972, ch. 401, § 2, p. 1164.

**STATUTORY NOTES****Cross References.**

Director of department of lands, § 58-105.

Fire warden defined, § 38-101.

Penalty for misdemeanor when not otherwise provided, § 18-113.

Slash defined, § 38-101.

**Prior Laws.**

Former § 38-125 was repealed. See Prior Laws, § 38-101.

**Compiler's Notes.**

The name of the state forester has been changed to director of the department of lands on authority of S.L. 1974, ch. 286, § 1 and S.L. 1974, ch. 17, § 3 (§ 38-101(g)).

**RESEARCH REFERENCES**

**Am. Jur.** — 35 Am. Jur. 2d, Fires, §§ 2, 20 et seq.

**C.J.S.** — 98 C.J.S., Woods and Forests, § 3 et seq.

**A.L.R.** — Liability of property owner for damages from spread of accidental fire originating on property. 17 A.L.R.5th 547.

**38-126. Interference with protective agencies — Penalty.** — Any person who shall wilfully or maliciously do any act or thing tending to interfere with the efficient use and operation by any forest protective agency provided for by this chapter or operating under agreements with the director of the department of lands, of its tools, supplies and equipment, or with the performance of its duties, shall be guilty of a misdemeanor.

**History.**

1972, ch. 401, § 2, p. 1164.

**STATUTORY NOTES****Cross References.**

Director of department of lands, § 58-105.

**Prior Laws.**

Former § 38-126 was repealed. See Prior Laws, § 38-101.

**Compiler's Notes.**

The name of the state forester has been changed to director of the department of lands on authority of S.L. 1974, ch. 286, § 1 and S.L. 1974, ch. 17, § 3 (§ 38-101(g)).

**38-127. Destruction of signs and warnings — Penalties.** — Any person who shall wilfully or maliciously destroy, deface, disfigure, or needlessly remove any sign, poster, warning or notice posted under the provisions of this chapter or by any forest protective agency cooperating with the state under this chapter, shall be guilty of a petty misdemeanor.

**History.**

1972, ch. 401, § 2, p. 1164.

**STATUTORY NOTES****Cross References.**

Penalty for misdemeanor when not otherwise provided, § 18-113.

**Prior Laws.**

Former § 38-127 was repealed. See Prior Laws, § 38-101.

**38-128. Duties of prosecuting attorneys and attorney general.** — At the discretion of the director of the department of lands, it shall be the duty of the attorney general or the prosecuting attorney of the county within which such action lies, to prepare, upon information furnished by the director of the department of lands or the fire warden of any forest protective district, and foreclose all liens, other than those provided for in sections 38-111, 38-112 and 38-113, Idaho Code, and to prosecute in the name of the state of Idaho all actions for the recovery of penalties and costs and expenses incurred by the director of the department of lands, his deputy or fire warden of the district in carrying out the provisions of this chapter. For the purposes of this section, venue shall be determined subject to the terms of applicable Idaho law at the time of the incident. Civil actions against nonresidents of the state shall be prosecuted by the attorney general.



Whenever any arrest shall have been made for the violation of any provisions of this chapter, or whenever any evidence, which shows with reasonable certainty any such violation, shall have been lodged with him, the prosecuting attorney of the county in which the criminal act was committed must prosecute the offender with all diligence and energy.

**History.**

1972, ch. 401, § 2, p. 1164; am. 2003, ch. 27, § 1, p. 100.

**STATUTORY NOTES****Cross References.**

Director of department of lands, § 58-105.  
Fire warden defined, § 38-101.

**Prior Laws.**

Former § 38-128 was repealed. See Prior Laws, § 38-101.

**Compiler's Notes.**

The name of the state forester has been changed to director of the department of lands on authority of S.L. 1974, ch. 286, § 1 and S.L. 1974, ch. 17, § 3 (§ 38-101(g)).

**38-129. Forest protection fund — Custody, sources and appropriation — Disbursement.** — The state treasurer shall be custodian of a fund known as the “forest protection fund” into which shall be paid all owners’ assessments, penalties and costs recovered in actions authorized by this chapter, and a portion of all fines as provided in the succeeding section and all funds accruing or received under any other provision of this chapter including all funds allocated by the United States under the act of March 1, 1911 (36 Stat. 96) and amendments thereto, known as the Weeks law, and the act of June 7, 1924, known as the Clarke-McNary act, and all other federal acts for forest fire protection. All moneys in existing forest protection or foresters’ special fund are hereby transferred to the forest protection fund established hereby.

All moneys appropriated for, accruing to or received by this fund are hereby appropriated for the purposes of this chapter and shall be paid out by the state treasurer only upon state vouchers prepared and approved by the director of the department of lands and approved by the state board of examiners. All disbursements, costs and expenses accruing, contracted for and/or incurred by the director of the department of lands in administering the provisions of this chapter and in carrying out the agreements authorized by section 38-104, Idaho Code, and not otherwise provided for shall be paid from this fund; provided, that disbursements of such portions of this fund as are represented by allotments to the state under the Weeks law and the Clarke-McNary act and other federal acts for forest fire protection shall be limited to the purpose for which such allotments are made by the federal government.

The director of the department of lands may convert the money derived from this fund into a revolving fund as may be necessary or into a general expense fund for the payment of such disbursements as are herein provided for.

**History.**

1972, ch. 401, § 2, p. 1164.

## STATUTORY NOTES

**Cross References.**

State board of examiners, § 67-2001 et seq.

**Prior Laws.**

Former § 38-129 was repealed. See Prior Laws, § 38-101.

**Federal References.**

Portions of the Weeks law, referred to in this section, are compiled as 16 USCS §§ 513 to 519, 521, 552, 563. Portions of the Clarke-

McNary Act (43 Stat. 655), referred to in this section, are compiled as 16 USCS §§ 499, 505, 515, 568, 569, and 570.

**Compiler's Notes.**

The name of the state forester has been changed to director of the department of lands on authority of S.L. 1974, ch. 286, § 1 and S.L. 1974, ch. 17, § 3 (§ 38-101(g)).

The words enclosed in parentheses so appeared in the law as enacted.

**38-130. Disposition of fines.** — Notwithstanding the provisions of section 19-4705, Idaho Code, fines collected for violations of this chapter or any provisions thereof shall be apportioned as follows: ten per cent (10%) to the state treasurer for deposit in the state general fund, fifty per cent (50%) to the current expense fund of the county in which the violation occurred and forty per cent (40%) to the state treasurer for deposit in the forest protection fund.

**History.**

1972, ch. 401, § 2, p. 1164.

## STATUTORY NOTES

**Cross References.**

Forest protection fund, § 38-129.

**Prior Laws.**

Former § 38-130 was repealed. See Prior Laws, § 38-101.

**38-131. Deficiency warrants for excess costs of fire suppression.** — In event the actual cost for the control or suppression of forest fires in any forest protective district exceeds in any one (1) year the maximum moneys available for forest protection in that district from the forest protection fund or any other special or general fund provided for that purpose, the state board of land commissioners may authorize the issuance of deficiency warrants for the purpose of defraying such excess costs and when so authorized the state controller shall draw deficiency warrants against the general fund.

**History.**

1972, ch. 401, § 2, p. 1164; am. 1976, ch. 42,

§ 4, p. 90; am. 1994, ch. 180, § 65, p. 420; am. 2003, ch. 32, § 18, p. 115.

## STATUTORY NOTES

**Cross References.**

Forest protection fund, § 38-129.

State board of land commissioners, Idaho Const., Art. IX, § 7 and § 58-101 et seq.

State controller, § 67-1001 et seq.

**Prior Laws.**

Former § 38-131 was repealed. See Prior Laws, § 38-101.

**Effective Dates.**

Section 42 of S.L. 1976, ch. 42 provided this section should be in full force and effect on and after July 1, 1976.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the names of the state auditor to state controller [1994 S.J.R.



No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to

this section by § 65 of S.L. 1994, ch. 180 became effective January 2, 1995.

**38-131A. Deficiency warrants for costs of fire suppression on state-owned range lands.** — The state board of land commissioners may authorize the issuance of deficiency warrants for the purpose of paying the costs of fire suppression on state-owned range lands whether or not said lands are adjacent to or intermingled with forest lands. When so authorized, the state controller shall draw deficiency warrants against the general fund.

**History.**

I.C., § 38-131A, as added by 1988, ch. 208,

§ 2, p. 390; am. 1994, ch. 180, § 66, p. 420; am. 2003, ch. 32, § 19, p. 115.

**STATUTORY NOTES**

**Cross References.**

State board of land commissioners, Idaho Const., Art. IX, § 7 and § 58-101 et seq.

State controller, § 67-1001 et seq.

**Effective Dates.**

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [Jan-

uary 2, 1995] if the amendment to the Constitution of Idaho changing the names of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 66 of S.L. 1994, ch. 180 became effective January 2, 1995.

**38-132. Regulations of the board — Penalty for violation.** — The state board of land commissioners may make such rules and regulations, not inconsistent with this chapter, as may be reasonable and necessary or appropriate for carrying out the provisions of this chapter and for efficient administration thereof. Any person violating any rule or regulation of the board, after written notice of the regulation has been furnished, shall be deemed guilty of the same crime as provided in the section of this chapter to which the rule or regulation pertains or if none be specified, then such violation shall be deemed a petty misdemeanor.

**History.**

1972, ch. 401, § 2, p. 1164.

**STATUTORY NOTES**

**Cross References.**

Penalty for misdemeanor when not otherwise provided, § 18-113.

State board of land commissioners, Idaho Const., Art. IX, § 7 and § 58-101 et seq.

**Prior Laws.**

Former § 38-132 was repealed. See Prior Laws, § 38-101.

**38-133. Officers charged with enforcement.** — The director of the department of lands and his assistants, fire wardens, conservation officers and their deputies and all other peace officers of the state are hereby charged with the enforcement of the criminal provisions of this chapter and shall have full power and it shall be their duty to arrest with or without warrant any person found violating any of the provisions of this chapter or rules and regulations of the state board of land commissioners after notice made pursuant hereto and take him before a magistrate and make com-

plaint, and when any such officer shall have information that such violation has been committed he shall make similar complaint.

The authority of the fire wardens respecting the control or suppression of forest fires, summoning help or making arrests for violation of this chapter or rules and regulations of the board may extend to any adjacent district or to any part of the state in times of great fire danger, providing that in case of conflict of authority resulting therefrom, the fire warden in whose district the fire is located shall have ultimate control. In emergencies fire wardens may commandeer tools, supplies and equipment and may employ able-bodied persons or compel assistance of able-bodied persons and neither the state board of land commissioners, the director, or his delegates, fire wardens or deputy fire wardens, shall be liable to civil action for trespass committed in the discharge of their duties; provided, that in performing their duties they exercise reasonable care to avoid doing unnecessary damage.

#### **History.**

1972, ch. 401, § 2, p. 1164; am. 1974, ch. 17, § 8, p. 308.

### **STATUTORY NOTES**

#### **Cross References.**

Director of department of lands, § 58-105.  
Fire warden defined, § 38-101.  
Forest land defined, § 38-101.  
State board of land commissioners, Idaho Const., Art. IX, § 7 and § 58-101 et seq.

severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

#### **Prior Laws.**

Former § 38-133 was repealed. See Prior Laws, § 38-101.

#### **Effective Dates.**

Section 5 of S.L. 1972, ch. 401 provided this act shall take effect on and after July 1, 1973.

#### **Compiler's Notes.**

Section 3 of S.L. 1972, ch. 401 read "The provisions of this act are hereby declared to be

Section 75 of S.L. 1974, ch. 17 provided the act should be in full force and effect on and after July 1, 1974.

### **RESEARCH REFERENCES**

**C.J.S.** — 98 C.J.S., Woods and Forests, §§ 7, 9.

**38-134. Forest practices act administration — Funding.** — The director of the department of lands is charged in section 38-1305, Idaho Code, to administer and enforce the forest practices act on all private forest lands within the state. Funding for this activity shall come from an annual budget request from the general fund and from an annual assessment to be paid by every private owner of forest land in the state. The assessment for private owners of forest lands whose total acres of forest lands are twenty-five (25) acres or fewer shall be equal to the per acre cost multiplied by twenty-five (25). For private owners of forest lands whose total acres of forest lands are twenty-six (26) acres or more, the assessment shall be determined by the state board of land commissioners not to exceed ten cents (10¢) an acre per year. The assessment shall be collected in the same fashion

and at the same time as the forest protection assessment described in section 38-111, Idaho Code.

**History.**

I.C., § 38-134, as added by 1987, ch. 192, § 4, p. 390; am. 2003, ch. 78, § 1, p. 252; am. 2005, ch. 176, § 1, p. 547.

**STATUTORY NOTES**

**Cross References.**

Director of department of lands, § 58-105.  
Forest practices act, § 38-1301 and notes thereto.

State board of land commissioners, Idaho Const., Art. IX, § 7 and § 58-101 et seq.

1925, ch. 150, § 32, p. 265; I.C.A., 37-135; am. 1969, ch. 149, § 1, p. 474; am. 1969, ch. 304, § 1, p. 910, was repealed by S.L. 1972, ch. 401, § 4.

Another former § 38-134 was repealed. See Prior Laws, § 38-101.

**Prior Laws.**

Former § 38-134, which comprised S.L.

**38-135. Forest practices administration account.** — There is hereby created in the dedicated fund of the state treasury a forest practices administration account into which shall be paid the assessment on private owners of forest lands as provided in section 38-134, Idaho Code.

**History.**

I.C., § 38-135, as added by 1987, ch. 250, § 3, p. 390.

**STATUTORY NOTES**

**Prior Laws.**

Former § 38-135, which comprised S.L. 1925, ch. 150, § 33, p. 265; I.C.A., § 37-136 was repealed by S.L. 1967, ch. 315, § 11.

**38-136. Community forestry trust account.** — (1) There is hereby created within the dedicated fund of the state treasury the community forestry trust account.

(2) The account shall consist of the following:

- (a) Moneys as provided in section 63-3067B, Idaho Code;
- (b) Donations, gifts, and grants from any source;
- (c) Any other moneys which may hereinafter be provided by law; and
- (d) Interest earned by the account.

(3) The director or designee of the department of lands may authorize disbursements of moneys from the account for projects related to community forestry.

(4) Not less than thirty-five percent (35%) of the funding for an approved project shall be provided by the entity sponsoring or proposing the project or program. Contributions such as materials, personnel, supplies, or services may be considered as all or part of the funding provided by the petitioning entity.

**History.**

I.C., § 38-136, as added by 1992, ch. 258, § 3, p. 749.



## STATUTORY NOTES

**Cross References.**

Director of department of lands, § 58-105.

**Prior Laws.**

Former § 38-136, which comprised 1925,

ch. 150, § 34, p. 265, I.C.A., § 37-137; am. 1943, ch. 156, § 6, p. 314, was repealed by S.L. 1967, ch. 315, § 11.

## 38-137, 38-138. State forest lands — Application of chapter — Separability. [Repealed.]

## STATUTORY NOTES

**Compiler's Notes.**

These sections, which comprised S.L. 1925, ch. 150, §§ 35 and 36, p. 265; I.C.A., §§ 37-

138 and 37-139; am. 1943, ch. 156, § 6, p. 314, were repealed by S.L. 1972, ch. 401, § 4.

## CHAPTER 2 REFORESTATION LAW

## SECTION.

38-201 — 38-223. [Repealed.]

## 38-201 — 38-223. Reforestation law. [Repealed.]

## STATUTORY NOTES

**Compiler's Notes.**

The following sections were repealed by S.L. 1995, ch. 173, § 1, effective July 1, 1995: § 38-201 which comprised 1929, ch. 185, § 1, p. 329; I.C.A., § 37-201; am. 1972, ch. 237, § 1, p. 618.

§ 38-202 which comprised 1929, ch. 185, § 2, p. 329; I.C.A., § 37-202.

§ 38-203 which comprised 1929, ch. 185, § 3, p. 329; I.C.A., § 37-203.

§ 38-204 which comprised 1929, ch. 185, § 4, p. 329; I.C.A., § 37-204; am. 1967, ch. 315, § 13, p. 906; am. 1972, ch. 237, § 2, p. 618.

§ 38-205 which comprised 1929, ch. 185, § 5, p. 329; am. 1931, ch. 71, § 1, p. 124; I.C.A., § 37-205; am. 1967, ch. 315, § 14, p. 906.

§ 38-206 which comprised 1929, ch. 185, § 6, p. 329; am. 1931, ch. 71, § 2, p. 124; I.C.A., § 37-206; am. 1967, ch. 315, § 15, p. 906; am. 1972, ch. 237, § 3, p. 618.

§ 38-207 which comprised 1929, ch. 185, § 7, p. 329; I.C.A., § 37-207; am. 1967, ch. 315, § 16, p. 906; am. 1974, ch. 17, § 9, p. 308.

§ 38-208 which comprised 1929, ch. 185, § 8, p. 329; I.C.A., § 37-208; am. 1967, ch. 315, § 17, p. 906.

§ 38-209 which comprised 1929, ch. 185, § 9, p. 329; I.C.A., § 37-209; am. 1974, ch. 17, § 10, p. 308.

§ 38-210 which comprised 1929, ch. 185, § 10, p. 329; I.C.A., § 37-210; am. 1967, ch.

315, § 18, p. 906; am. 1974, ch. 17, § 11, p. 308; am. 1993, ch. 216, § 20, p. 587.

§ 38-211 which comprised 1929, ch. 185, § 11, p. 329; I.C.A., § 37-211.

§ 38-212 which comprised 1929, ch. 185, § 12, p. 329; I.C.A., § 37-212; 1967, ch. 315, § 19, p. 906.

§ 38-213 which comprised 1929, ch. 185, § 13, p. 329; I.C.A., § 37-213; am. 1967, ch. 315, § 20, p. 906.

§ 38-214 which comprised 1929, ch. 185, § 14, p. 329; I.C.A., § 37-214.

§ 38-215 which comprised 1929, ch. 185, § 15, p. 329; I.C.A., § 37-215.

§ 38-216 which comprised 1929, ch. 185, § 16, p. 329; I.C.A., § 37-216.

§ 38-217 which comprised 1929, ch. 185, § 17, p. 329; I.C.A., § 37-217; am. 1967, ch. 315, § 21, p. 906.

§ 38-218 which comprised 1929, ch. 185, § 18, p. 329; I.C.A., § 37-218; am. 1967, ch. 315, § 22, p. 906.

§ 38-219 which comprised 1929, ch. 185, § 19, p. 329; I.C.A., § 37-219; 1967, ch. 315, § 23, p. 906.

§ 38-220 which comprised 1929, ch. 185, § 20, p. 329; I.C.A., § 37-220; 1967, ch. 315, § 24, p. 906.

§ 38-221 which comprised 1929, ch. 185, § 21, p. 329; I.C.A., § 37-221.

§ 38-222 which comprised 1929, ch. 185, § 22, p. 329; I.C.A., § 37-222.

§ 38-223 which comprised 1929, ch. 185, § 23, p. 329; I.C.A., § 37-223.



CHAPTER 3  
COOPERATIVE SUSTAINED YIELD DISTRICTS

SECTION.  
38-301 — 38-312. [Repealed.]

38-301 — 38-312. Cooperative sustained yield districts. [Repealed.]

STATUTORY NOTES

Compiler's Notes. 140, §§ 1 to 12, p. 226; 1967, ch. 315, § 25, p. 906, were repealed by S.L. 1987, ch. 64, § 1.  
These sections, which comprised 1937, ch.

CHAPTER 4  
FIRE HAZARD REDUCTION PROGRAMS

SECTION.	SECTION.
38-401. Supervision by director of the department of lands.	tracts with forest protective agencies.
38-402. Plans, programs and rules — Approval by state boards.	38-406. Forest lands belonging to state.
38-403. Delegation of powers to state forest warden.	38-407. Forest management account.
38-404. Contracts with owners of forest lands.	38-408. Moneys from contracts and appropriations — Expenditures and accounts.
38-405. Methods of reducing hazards — Con-	38-409. Bond of director.
	38-410. Certificate of clearance.
	38-411. Separability.

38-401. Supervision by director of the department of lands. — The director of the department of lands shall have the supervision, control and management of all fire hazards created by insects, disease, other natural causes, or by any person engaged in harvesting timber, ties, logs, poles, posts, cordwood, pulpwood, or any other forest product or potential forest product upon lands within the state of Idaho for the protection of forest resources, and shall have supervision, control and management of all fire hazard reduction plans, programs and regulations of or under the forestry laws of the state of Idaho.

The supervision, control, management or reduction, or any combination thereof, of fire hazards referred to in this section and in this chapter may include or be limited to the taking of protective measures reasonably intended to prevent the injury to or the destruction of forest resources without the actual abatement of the hazard. It shall be the public policy of this state, without unnecessarily restricting the director of the department of lands, to reduce, wherever practical, fire hazards by disposal or treatment of the slash created by the harvesting of forest products, having due regard for the effective and economical overall protection of forest land and resources.

In those cases where complete disposal or treatment of the slash is not planned or where partial disposal or treatment is planned the state forest warden shall submit to the director a detailed plan of protection for each separate operation listing the proposed expenditures and the amounts collected or to be collected. The director may approve such plan if the proposed expenditures are limited to one or more of the following:

1. Acquisition of equipment needed for fire protection or reduction of fire hazards referred to in this section.
2. Construction of appropriate structures aiding in fire protection or hazard reduction.
3. Acquisition or contracting for communications or a communication system.
4. Acquisition of appropriate tools, machinery and equipment needed for fire protection or hazard reduction.
5. Payment of personnel and apportioned overhead employed by the forest protective district.
6. Road maintenance and construction in slash areas where a fire hazard exists.

The percentage of total moneys accredited to each forest protective district that may be used within the district for protective measures in lieu of actual abatement of the fire hazards shall be determined annually by the director.

**History.**

1945, ch. 74, § 1, p. 108; am. 1957, ch. 183, § 1, p. 357; am. 1969, ch. 89, § 1, p. 296; am. 1974, ch. 17, § 12, p. 308.

**STATUTORY NOTES**

**Cross References.**

Director of department of lands, § 58-105.  
Forest, wildlife and range experiment station to conduct investigations and research into fire protection, § 38-706.

**RESEARCH REFERENCES**

**C.J.S.** — 98 C.J.S., Woods and Forests, § 15.

**38-402. Plans, programs and rules — Approval by state boards. —**

The director of the department of lands is hereby authorized and empowered to adopt plans, programs and rules for the management and reduction of fire hazards for the protection of forest resources, any of which hazards are created by insects, disease, other natural causes, or by any person engaged in harvesting timber, ties, logs, poles, posts, cordwood, pulpwood, or any other forest product or potential forest product upon lands within the state of Idaho.

All such plans, programs and rules for the supervision, management, control, and reduction of fire hazards for the protection of forest resources to be applied in any forest protective district before becoming effective shall be submitted to, and approved by the state board of land commissioners, and all contracts or agreements entered into by the director of the department of lands with any owner or owners, operator or operators of any forest lands covered by sections 38-401—38-410, Idaho Code, before becoming effective, shall be submitted to, and be approved by the state board of land commissioners.

**History.**

1945, ch. 74 § 2, p. 108; am. 1957, ch. 183, § 2, p. 357; am. 1969, ch. 89, § 2, p. 296; am. 1974, ch. 17, § 13, p. 308.

### STATUTORY NOTES

#### Cross References.

Director of department of lands, § 58-105. State board of land commissioners, Idaho Const., Art. IX, § 7 and § 58-101 et seq.

### RESEARCH REFERENCES

**C.J.S.** — 98 C.J.S., Woods and Forests, § 15.

**38-403. Delegation of powers to state forest warden.** — The director of the department of lands is hereby authorized and empowered to delegate any power granted to the director under sections 38-401 — 38-410[, Idaho Code,] to the state forest warden in any forest protective district.

#### History.

1945, ch. 74, § 3, p. 108; am. 1957, ch. 183, § 3, p. 357; am. 1969, ch. 89, § 3, p. 296; am. 1974, ch. 17, § 14, p. 308.

### STATUTORY NOTES

#### Cross References.

Director of department of lands, § 58-105. compiler to conform to the statutory citation style.

#### Compiler's Notes.

The bracketed insertion was added by the

**38-404. Contracts with owners of forest lands.** — The director of the department of lands is hereby authorized and empowered to enter into agreements with the owners of any forest lands or any operator engaged in operations on lands within the state of Idaho whereby slash is created, and under said contract the director may assume all responsibility created under the forestry laws of the state of Idaho for the management, and reduction of any fire hazard for the protection of forest resources; any such contract shall provide the amount to be paid by the owner or operator to the director by reason of his agreement to assume this responsibility.

#### History.

1945, ch. 74, § 4, p. 108; am. 1957, ch. 183, § 4, p. 357; am. 1969, ch. 89, § 4, p. 296; am. 1974, ch. 17, § 15, p. 308.

### STATUTORY NOTES

#### Cross References.

Director of department of lands, § 58-105. Forest lands defined, § 38-101. Slash defined, § 38-101.

### JUDICIAL DECISIONS

**Cited in:** Clearwater Timber Protective Ass'n v. District Court, 84 Idaho 129, 369 P.2d 571 (1962).

**38-405. Methods of reducing hazards — Contracts with forest protective agencies.** — The management and reduction of such fire hazards for the protection of forest resources shall be carried on by the director of the department of lands and the state forest wardens in keeping



with modern and progressive forest practices in furtherance of reforestation and more effective fire control and in accordance with the plans approved by the state board of land commissioners for the several forest protective districts, and the director or state forest wardens are hereby authorized to enter into contracts with forest protective agencies, including agencies of the United States of America, for the management and reduction of such fire hazards for the protection of forest resources when in their opinion the work can best be accomplished in that manner. The director, state forest wardens and recognized forest protective agencies, including any agency of the United States of America, with which the director or state forest warden has entered into an agreement for the management and reduction of any fire hazard for the protection of forest resources as herein provided, and any officer or official of such agency, shall not be liable for any damage to the land, product, improvement or other things of value of whatsoever nature upon the lands on which the fire hazards are being managed or reduced in accordance with provisions of sections 38-401 to 38-410, Idaho Code, inclusive, when all requisite care and caution has been used and such work is being or has been performed in compliance with the plans, programs, rules and contracts approved as provided in section 38-402, Idaho Code.

**History.**

1945, ch. 74, § 5, p. 108; am. 1953, ch. 219, § 1, p. 334; am. 1957, ch. 183, § 5, p. 357; am. 1969, ch. 89, § 5, p. 296; am. 1974, ch. 17, § 16, p. 308.

**STATUTORY NOTES****Cross References.**

State board of land commissioners, Idaho Const., Art. IX, § 7 and § 58-101 et seq.  
Director of department of lands, § 58-105.

**JUDICIAL DECISIONS**

**Cited in:** Clearwater Timber Protective Ass'n v. District Court, 84 Idaho 129, 369 P.2d 571 (1962).

**38-406. Forest lands belonging to state.** — The provisions of sections 38-401 — 38-410, Idaho Code, shall not apply to forest lands belonging to the state of Idaho. Provided, however, the state board of land commissioners may by order direct the director of the department of lands to apply the administration of all the provisions of this chapter to forest lands belonging to the state.

**History.**

1945, ch. 74, § 6, p. 108; am. 1969, ch. 89, § 6, p. 296; am. 1974, ch. 17, § 17, p. 308.

**STATUTORY NOTES****Cross References.**

State board of land commissioners, Idaho Const., Art. IX, § 7 and § 58-101 et seq.  
Director of department of lands, § 58-105.

**38-407. Forest management account.** — The state treasurer shall be



custodian of an account which is hereby created to be known as the "forest management account," into which shall be paid all funds accruing or received under any and all of the provisions of sections 38-401 — 38-410, Idaho Code.

**History.**

1945, ch. 74, § 7, p. 108; am. 1987, ch. 192, § 5, p. 390.

**STATUTORY NOTES**

**Cross References.**

State treasurer, Idaho Const. Art. IV, § 1.  
and § 67-1201 et seq.

**38-408. Moneys from contracts and appropriations — Expenditures and accounts.** — All moneys paid to the director of the department of lands, or the state forest wardens, under any contract whereby the director assumes the management and reduction of any fire hazard for the protection of forest resources, shall be deposited with the state treasurer and shall be credited to the forest management fund [account] as herein provided.

All moneys appropriated for, accruing to, or received by said fund [account] are hereby appropriated for the purpose specified in sections 38-401 — 38-410, Idaho Code, and shall only be used in the protective districts where collected. All funds in, or accruing to, the erosion control account after the effective date of this section shall be credited to the forest practices rehabilitation account created in section 38-1313, Idaho Code.

All moneys deposited in said fund [account] shall remain in the state treasury for the use of the director in the payment of items constituting claims against the fund [account]. This fund [account] may be drawn upon by sight drafts signed by the director and attached to vouchers for the planned expenditure, both in such form as the state controller shall prescribe. At such time as the board of examiners may prescribe the director shall present a complete itemized account of all expenditures from said fund [account]. The said board is authorized to approve or reject any item in said account. If any item thereof is disallowed the director or the state forest warden responsible therefor shall replace the amount thereof in the said fund [account]. The amount of the items allowed shall be credited by the state controller to the director.

**History.**

1945, ch. 74, § 8, p. 108; am. 1957, ch. 183, § 6, p. 357; am. 1969, ch. 89, § 7, p. 296; am.

1973, ch. 111, § 1, p. 201; am. 1974, ch. 17, § 18, p. 308; am. 1987, ch. 192, § 6, p. 390; am. 1994, ch. 180, § 67, p. 420.

**STATUTORY NOTES**

**Cross References.**

Director of department of lands, § 58-105.  
State board of examiners, § 67-2001 et seq.  
State controller, § 67-1001 et seq.  
State treasurer, Idaho Const., Art. IV, § 1  
and § 67-1201 et seq.

**Compiler's Notes.**

The bracketed insertions throughout this section were added by the compiler to supply the correct name of the referenced account. See § 38-407.

The phrase "the effective date of this sec-

tion" in the second paragraph refers to the effective date of S.L. 1987, ch. 192, which was July 1, 1987.

**Effective Dates.**

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Con-

stitution of Idaho changing the names of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 67 of S.L. 1994, ch. 180 became effective January 2, 1995.

**38-409. Bond of director.** — The director of the department of lands shall be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code.

**History.**

1945, ch. 74, § 9, p. 108; am. 1957, ch. 183, § 7, p. 357; am. 1969, ch. 89, § 8, p. 296; am.

1971, ch. 136, § 23, p. 522; am. 1974, ch. 17, § 19, p. 308.

**STATUTORY NOTES**

**Cross References.**

Director of department of lands, § 58-105.

act should be in full force and effect on and after July 1, 1974.

**Effective Dates.**

Section 75 of S.L. 1974, ch. 17 provided the

**38-410. Certificate of clearance.** — Any owner or operator who has entered into a contract with the director of the department of state lands for the management and reduction of any fire hazard for the protection of forest resources and upon payment of the contract price in accordance with the terms of said contract and with the full compliance with the terms of said contract by such owner or operator shall be granted a certificate of clearance and be relieved of any and all further liability and responsibility for the removal or reduction of any such fire hazard.

**History.**

1945, ch. 74, § 10, p. 108; am. 1957, ch. 183, § 8, p. 357; am. 1969, ch. 89, § 9, p. 296.

**STATUTORY NOTES**

**Cross References.**

Director of department of lands, § 58-105.

state lands" were substituted for "state land commissioner" on authority of S.L. 1974, ch. 286, § 1 and S.L. 1974, ch. 17, § 40 (§ 58-104).

**Compiler's Notes.**

The words "director of the department of

**38-411. Separability.** — The provisions of this chapter are hereby declared to be separable, and, if any part hereof is declared to be unconstitutional, such shall not affect the validity of the other portions of this chapter.

**History.**

I.C., § 38-411, as added by 1957, ch. 183, § 9, p. 357.

CHAPTER 5  
SEEDING OF BURNED AREAS

SECTION.	SECTION.
38-501. Statement of policy.	Appointment — Duties — Compensation and expenses.
38-502. State to control erosion by seeding of grasses.	38-508. Burn seeding fund — Deficiency warrants.
38-503. Federal aid.	38-509. Repayment to the fund — Tax levy — Assessments and payments for seed or services.
38-504. County boards to cooperate with other agencies.	38-510. Disbursements.
38-505. Creation of burn seeding areas.	38-511. County commissioners may pay part of cost of seeding.
38-506. Abatement of costs as tax.	
38-507. County burn seeding supervisor —	

**38-501. Statement of policy.** — In more heavily timbered areas of the state, on lands owned by the federal government, state of Idaho, the counties, individuals, and on land in transit to counties through tax delinquency, devastating forest fires annually denude considerable areas of vegetation and subject such lands to erosion with total loss of top soils; permit an infestation of weeds which imperil adjacent agricultural lands, destroy feed and cover for wild life, and create great distress in agriculture through loss of grazing. Therefore, the seeding of such burned areas to suitable range grasses and/or legumes as soon as possible after the cessation of such fires is declared to be a matter of public welfare to the state.

**History.**  
1941, ch. 71, § 1, p. 135.

STATUTORY NOTES

**Cross References.**  
Forest, wildlife and range experiment station to conduct investigations and research into problems of management of forest or wild land, § 38-706; to investigate continuous use of forage and range resources on wild or forest lands, § 38-710.

Seed and nursery stock for special plantings, forest wildlife and range experiment station to investigate possibilities and experiment with, § 38-708.

**38-502. State to control erosion by seeding of grasses.** — It shall be the duty of the state of Idaho through any legally constituted bureau, division or department thereof having control of any burned over lands, to control erosion thereon, to provide feed and cover for wild life and range for livestock, by providing for seeding grasses and/or legumes. Whenever possible such work shall be done in cooperation with the counties and the federal government, or any agency thereof. It shall be the duty of any officer having charge of any bureau, division or department of the state of Idaho, having under his jurisdiction, lands which may hereafter be burned over, to request the state legislature to provide funds for the seeding of such areas if he has no funds at his disposal which may be used for this purpose.

**History.**  
1941, ch. 71, § 2, p. 135.



**38-503. Federal aid.** — The state of Idaho is hereby authorized to cooperate with the federal government, or any established agency thereof, in any program for seeding burned over areas which shall be deemed advisable, and any bureau, division or department of the state, and also any of the individual counties are empowered to accept any advisable program and to make any necessary regulations which are not in contradiction to the purpose of sections 38-501 — 38-511[, Idaho Code]. The treasurer of the state of Idaho is hereby directed and authorized to accept any funds or grants in aid from the federal government for the purposes declared in sections 38-501 — 38-511[, Idaho Code]. Expenditures of such funds shall be in manner provided by law, and in conformance with the provisions of federal requirements.

**History.**

1941, ch. 71, § 3, p. 135.

**STATUTORY NOTES**

**Cross References.**

State treasurer, Idaho Const., Art. IV, § 1 and § 67-1201 et seq.

first and second sentences were added by the compiler to conform to the statutory citation style.

**Compiler's Notes.**

The bracketed insertions at the end of the

**38-504. County boards to cooperate with other agencies.** — It shall be the duty of the various boards of county commissioners of counties to direct seeding of burned over areas and to prescribe methods by which such seeding shall be done. In doing so such boards are hereby authorized to cooperate with other governmental units and with local, state and federal agencies and also with individual land owners.

**History.**

1941, ch. 71, § 4, p. 135.

**38-505. Creation of burn seeding areas.** — The boards of county commissioners of the various counties are hereby authorized to create areas that may hereafter be burned over within their respective counties, into "Burn Seeding Areas," and such boards may purchase, or authorize the purchase of seed to seed a part or all of such areas. The county boards are also authorized to enter into contracts with other state agencies or with federal agencies to seed land under the jurisdiction of such agencies within such "Burn Seeding Areas."

Whenever the Board of County Commissioners of any county deems it necessary or desirable to create a "Burn Seeding Area," it must by resolution adopted by a majority of the members of said Board, setting forth in such resolution that such said Burning [Burn] Seeding Area is necessary within the county, and describing all of the lands included in said area, and fixing a time of hearing. The Clerk of the Board must publish said resolution and a notice requiring all interested persons to appear at a time and place before said Board, as designated in said resolution, and show cause if any they have why said Burn Seeding Area should not be created. Said notice must be



published in one (1) issue of a weekly newspaper published in the County. If no newspaper is published in the county, then in such paper as the Board may direct in its resolution. Said resolution and said notice shall provide a date of hearing, which shall be not less than ten days from the date of publication. Upon said hearing, after fully considering said matter, if the Board finds that the creation of said Burn Seeding Area is desirable and necessary, it shall make an order in writing to that effect, and file the same with the Clerk of the District Court in and for said County. Anyone interested may appeal to the District Court under the procedure set forth by Sections 31-1510, 31-1511, 31-1512[, Idaho Code].

#### History.

1941, ch. 71, § 5, p. 135.

### STATUTORY NOTES

#### Compiler's Notes.

The bracketed insertion in the first sentence in the second paragraph was added by the compiler to correct the naming convention for the referenced areas.

The first sentence in the second paragraph is somewhat confusing. It is believed that, following the word "Area" where it first occurs, the sentence should read as follows: "a majority of the members of said board must

adopt a resolution setting forth that such burn seeding area is necessary ..."

Since enactment of this section, former versions of sections 31-1510, 31-1511 and 31-1512, referred to at the end of the section, were repealed and later replaced with unrelated subject matter.

The bracketed insertion at the end of the section was added by the compiler to conform to the statutory citation style.

**38-506. Abatement of costs as tax.** — Whenever the county board has, pursuant to the provisions contained in sections 38-501 — 38-511[, Idaho Code], seeded any area, such board shall prorate the costs and assess the same against the land so seeded. Any state agencies, departments or bureaus having under their jurisdiction land within such areas belonging to the state are hereby authorized and directed to pay the respective assessment against the land under their jurisdiction. Any assessments against land within such areas and any sums due the county for seed furnished to seed burned over land owned by private individuals shall be assessed against such land and entered on the current tax list of the owner thereof, and the charge shall be collected at the same time and in the same manner as general taxes and the lien thereof shall be a charge of equal priority with general taxes.

#### History.

1941, ch. 71, § 6, p. 135.

### STATUTORY NOTES

#### Compiler's Notes.

The bracketed insertion in the first sen-

tence was added by the compiler to conform to the statutory citation style.

**38-507. County burn seeding supervisor — Appointment — Duties — Compensation and expenses.** — The boards of county commissioners are hereby authorized to appoint or hire a county burn seeding supervisor whose duties shall be as follows:

(1) To advise the board of county commissioners of areas that should be seeded.

(2) To cooperate with the owners of land in this seeding program.

(3) To cooperate with the state and local agencies or agencies of the federal government with any program for seeding which may be operative within the county.

(4) To present to the owners of land and to the board of county commissioners plans for seeding burned over areas.

(5) To do any other things which the board of county commissioners may deem advisable under sections 38-501 — 38-511[, Idaho Code].

Such county burn seeding supervisor may be paid his actual expenses incurred by him in the discharge of his duties and may receive compensation for his services in such amounts as may be fixed by the board of county commissioners, payable as a county expense out of the county current expense fund, but not to exceed \$8.00 per day or \$1,500.00 per annum.

**History.**

1941, ch. 71, § 7, p. 135.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion in subsection (5)

was added by the compiler to conform to the statutory citation style.

**38-508. Burn seeding fund — Deficiency warrants.** — It shall be the duty of the board of county commissioners of any county in which a burn seeding program is undertaken to establish a fund to be known as the "Burn Seeding Fund" which shall be created out of the county current expense fund. It shall be created on the first Monday of February of each year. In any county in which emergency shall require immediate action in seeding of such burn seeding areas as may be established, the board of county commissioners having jurisdiction over such areas are empowered to pay such costs incurred in such seeding procedure by issuance of deficiency warrants, and shall provide for retirement of such warrants out of a burn seeding fund to be created as hereinabove provided.

**History.**

1941, ch. 71, § 8, p. 135.

**38-509. Repayment to the fund — Tax levy — Assessments and payments for seed or services.** — Repayments to this fund may be made from the proceeds of a tax levy which may be made by the board of county commissioners which shall not exceed two hundredths percent (.02%) of the market value for assessment purposes on all taxable property in said county. This levy shall be of equal priority with general taxes and shall be collected at the same time and in the same manner as general taxes. Repayments to this fund may also be made from assessments for payments made for seed furnished and services performed in seeding. If payments for seed or services in seeding are not made in the form of cash but are collected in the part of the tax they shall be collected as provided in section 38-506, Idaho

Code, and the part assessed for burn seeding costs together with interest thereon at county warrant rates, shall be allocated to burn seeding fund.

**History.**

1941, ch. 71, § 9, p. 135; am. 1995, ch. 82, § 15, p. 218.

**STATUTORY NOTES**

**Cross References.**

Burn seeding fund, § 38-508.

**38-510. Disbursements.** — Disbursements from this fund shall be made on order of county commissioners for the purpose of purchasing seed and for services rendered in seeding such burned areas, and any other incidental charges that may be necessary for the operation of sections 38-501 — 38-511[, Idaho Code].

**History.**

1941, ch. 71, § 10, p. 135.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion at the end of the

section was added by the compiler to conform to the statutory citation style.

**38-511. County commissioners may pay part of cost of seeding.** — The board of county commissioners may at its option pay not to exceed one-half (1/2) of the cost of seeding land not owned by the county and may pay the entire cost of seeding county-owned land. The commissioners shall reimburse the current expense fund of the county for the amount of burn seeding fund from the proceeds of the levy provided for in section 38-509[, Idaho Code].

**History.**

1941, ch. 71, § 11, p. 135.

**STATUTORY NOTES**

**Cross References.**

Burn seeding fund, § 38-508.

section was added by the compiler to conform to the statutory citation style.

**Compiler's Notes.**

The bracketed insertion at the end of the

**CHAPTER 6**

**FOREST INSECTS, PESTS AND DISEASE**

**SECTION.**

38-601. Statement of policy.

38-602. Determination of infested areas —  
Power of director of the department of lands — Coopera-

**SECTION.**

tion with federal and other agencies.

38-603. Director to adopt plans, programs and rules for the regulation,



## SECTION.

management and control of  
forest pests.

38-604. Funding for insect and disease pro-  
gram.

38-605. Project cost for state-owned lands.

## SECTION.

38-606. Forest pest account.

38-607. Approval of use of the forest pest  
account.

38-608. State not liable for damages.

**38-601. Statement of policy.** — It is hereby declared to be the public policy of the state of Idaho in order to protect and preserve forest resources from the ravages of the Tussock moth, pine beetle and other destructive forests insects, pests and disease, to protect the watersheds of Idaho, to enhance the production of forests, to promote the stability of forest industry and to protect the recreational values of the forests, to independently and through cooperation with the federal government and private timber owners to adopt measures to control, suppress and eradicate outbreaks of the Tussock moth, pine beetle or other destructive forest insects, pests and disease.

This act is declared to be an emergency measure necessary for the preservation of public health and safety, for the preservation of forest resources, for the preservation of the watersheds and for the preservation of recreational values of the forest lands of this state.

**History.**

1947, ch. 139, § 1, p. 335; am. 1987, ch. 192,  
§ 7, p. 390.

**STATUTORY NOTES****Cross References.**

Forest, wildlife and range experiment station to conduct research into protection against disease and insects, § 38-706.

**Compiler's Notes.**

The term "this act" in the second paragraph refers to S.L. 1947, ch. 139, which is codified as §§ 38-601, 38-602, and 38-608.

**RESEARCH REFERENCES**

C.J.S. — 3 C. J. S., Agriculture, § 98 et seq.

**38-602. Determination of infested areas — Power of director of the department of lands — Cooperation with federal and other agencies.** — Whenever the director of the department of lands determines that there exists the threat of an infestation of Tussock moth, pine beetle, or other destructive forest insects, pests or disease injurious to the timber or forest growth on forest lands and that said infestation is of such a character as to be a menace to the timber or forest growth of this state, the director of the department of lands may, with the approval of the state board of land commissioners, declare the existence of a zone of infestation, and may declare and fix the boundaries so as to definitely describe and identify the zone of infestation.

Thereupon, the director of the department of lands or his agent shall have the power to go upon the land within said zone of infestation and shall cause the insect, infestation or disease to be suppressed, eradicated and destroyed in the manner approved by the state board of land commissioners and in order to accomplish the purposes of this chapter the director of the



department of lands may enter into cooperative agreement with the federal government and other public or private agencies and with timber land owners using such funds as have been or may hereafter be made available for such purposes; provided, that whenever the cost of suppression and eradication of forest insects, pests or diseases on forest lands exceeds the funds appropriated or otherwise available for that purpose, the state board of land commissioners may authorize the issuance of deficiency warrants against the general account for up to two hundred fifty thousand dollars (\$250,000) in any one (1) year for such suppression or eradication.

**History.**

1947, ch. 139, § 2, p. 335; am. 1987, ch. 192,  
§ 8, p. 390; am. 1988, ch. 244, § 1, p. 478.

**STATUTORY NOTES**

**Cross References.**

Director of department of lands, § 58-105. State board of land commissioners, Idaho Const., Art. IX, § 7 and § 58-101 et seq.

**38-603. Director to adopt plans, programs and rules for the regulation, management and control of forest pests.** — The director of the department of lands shall develop plans, programs and rules for the regulation, management and control of forest insects, diseases, or other pests. These programs, plans and rules shall include, but are not limited to, the areas of prevention, detection, evaluation and control of such pests.

**History.**

I.C., § 38-603, as added by 1987, ch. 192,  
§ 9, p. 390.

**STATUTORY NOTES**

**Cross References.**

Director of department of lands, § 58-105. Ignated as § 38-608 by § 10 of S.L. 1987, ch. 192.

**Compiler's Notes.**

Former § 38-603 was amended and redes-

**38-604. Funding for insect and disease program.** — The insect and disease program as described in chapter 6, title 38, Idaho Code, shall be incorporated into the forest protection program and shall be funded by moneys from the general account. Funding for special pest control projects may include an appropriation from the general account, contributions from cooperating landowners who have lands included in the project area, as defined in section 38-602, Idaho Code, or any combination of sources.

**History.**

I.C., § 38-604, as added by 1987, ch. 192,  
§ 9, p. 390.

**38-605. Project cost for state-owned lands.** — The state's share of the costs for special pest control projects for state-owned lands within the project area as described in section 38-602, Idaho code [Code], shall be

funded by moneys in the forest pest account, and moneys from the state general account.

**History.**

I.C., § 38-605, as added by 1987, ch. 192,  
§ 9, p. 390.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed word "Code" was inserted by

the compiler to conform to the statutory citation style.

**38-606. Forest pest account.** — There is hereby created in the dedicated fund of the state treasury a forest pest account into which shall be paid all moneys collected or received under any and all provisions of this chapter.

**History.**

I.C., § 38-606, as added by 1987, ch. 192,  
§ 9, p. 390.

**38-607. Approval of use of the forest pest account.** — All special pest control projects and expenditure of funds in the forest pest account shall be approved by the state board of land commissioners.

**History.**

I.C., § 38-607, as added by 1987, ch. 192,  
§ 9, p. 390.

**STATUTORY NOTES**

**Cross References.**

State board of land commissioners, Idaho  
Const., Art. IX, § 7 and § 58-101 et seq.

**38-608. State not liable for damages.** — The state of Idaho or the director of the department of lands or his agent shall not be liable for any damage to bees, livestock, or other property or resource injured in the process of treating the infested area under the provisions of sections 38-601 — 38-608, Idaho Code.

**History.**

1947, ch. 139, § 3, p. 335; am. and redesign.  
1987, ch. 192, § 10, p. 390.

**STATUTORY NOTES**

**Cross References.**

Director of department of lands, § 58-105.

603 and was amended and redesignated as  
§ 38-608 by § 10 of S.L. 1987, ch. 192.

**Compiler's Notes.**

This section was formerly compiled as § 38-

## CHAPTER 7

### FOREST, WILDLIFE AND RANGE EXPERIMENT STATION

**SECTION.**

- 38-701. Experiment station created.  
38-702. Director — Control — Assistants and employees.  
38-703. Duties of experiment station.  
38-704. Field experiment substations — Acceptance of land or other donations.  
38-705. Reports to state board of regents.  
38-706. Forest and timber growing problems — Investigation and research.  
38-707. Timber products — Marketing problems — Investigation and research.  
38-708. Seeds and nursery stock for special plantings — Investigation and experimentation.

**SECTION.**

- 38-709. Game and other wildlife — Investigation and research.  
38-710. Forage and range resources upon wild and forest lands — Investigation and research.  
38-711. Recommendations to administrative agencies — Publishing of information.  
38-712. Information, correspondence and data — Duty to guard.  
38-713. Separability.  
38-714. Creation of forest policy analysis group — Powers and duties.

**38-701. Experiment station created.** — There hereby is created and established in the State University of Idaho, School of Forestry [college of natural resources], an experiment station to be known as the Forest, Wildlife and Range Experiment Station of the State of Idaho.

**History.**

1939, ch. 259, § 1, p. 643.

#### STATUTORY NOTES

**Compiler's Notes.**

The bracketed insertion was added by the compiler to reflect the current name of the

relevant department of the University of Idaho.

#### RESEARCH REFERENCES

C.J.S. — 3 C.J.S., Agriculture, § 19.

**38-702. Director — Control — Assistants and employees.** — The dean of the School of Forestry [college of natural resources] of the University of Idaho shall be the director of the forest, wildlife and range experiment station of the state of Idaho. The said experiment station shall be under the control of the state board of regents of the University of Idaho who shall have the power and whose duty it shall be to appoint or designate such assistants and employees as may be necessary, and to fix their compensation.

**History.**

1939, ch. 259, § 2, p. 643.



## STATUTORY NOTES

**Cross References.**

Board of regents, § 33-2802.

**Compiler's Notes.**

The bracketed insertion was added by the

compiler to reflect the current name of the relevant department of the University of Idaho.

**38-703. Duties of experiment station.** — It shall be the duty of the forest, wildlife and range experiment station of the state of Idaho to institute and conduct investigations and research into the forestry, wildlife and range problems of the forest lands of the state; to conduct cooperative investigation and research with the board of land commissioners, the state fish and game commission, the Idaho department of agriculture, other schools and colleges of the University of Idaho, and with other departments and branches of the state government when mutually beneficial; with forest protective associations and with private individuals and agencies; with farm bureaus of the state and with the county agents; and to cooperate in investigation and research with the United States government and its branches, as a land grant institution, or otherwise, in accordance with their regulations.

**History.**

1939, ch. 259, § 3, p. 643; am. 1974, ch. 18, § 225, p. 364.

## STATUTORY NOTES

**Cross References.**

Department of agriculture, § 22-101 et seq.

Fish and game commission, § 36-102.

State board of land commissioners, Idaho Const., Art. IX, § 7 and § 58-101 et seq.

**Effective Dates.**

Section 263 of S.L. 1974, ch. 18 provided the act should be in full force and effect on and after July 1, 1974.

**38-704. Field experiment substations — Acceptance of land or other donations.** — The forest, wildlife and range experiment station of the state of Idaho is authorized to establish such field experiment substations as in the judgment of the state board of regents may be necessary. The state board of regents is hereby authorized to accept, for and in behalf of the state of Idaho, such gifts of land or other donations as may be made to the state for the purposes of sections 38-701 — 38-713[, Idaho Code].

**History.**

1939, ch. 259, § 4, p. 643.

## STATUTORY NOTES

**Cross References.**

Board of regents, §§ 33-2802.

section was added by the compiler to conform to the statutory citation style.

**Compiler's Notes.**

The bracketed insertion at the end of the

**38-705. Reports to state board of regents.** — The state board of



regents may require from said experiment station, such regular and special reports to be prepared and submitted as it deems necessary.

**History.**

1939, ch. 259, § 5, p. 643.

**STATUTORY NOTES**

**Cross References.**

Board of regents, § 33-2802.

**38-706. Forest and timber growing problems — Investigation and research.** — Within the state of Idaho, the forest, wildlife and range experiment station is authorized to investigate and conduct research into the various problems incident to the production of timber either by natural or artificial means, its protection against fire, disease and insects, or any other influences tending to kill or destroy mature or immature forest trees, and the problems of management of forest or wild land to the end that the state and its citizens may derive the greatest benefits both economic and social that flow from such production, protection and management.

**History.**

1939, ch. 259, § 6, p. 643.

**STATUTORY NOTES**

**Cross References.**

Fire hazard reduction programs under supervision of director of department of lands, § 38-401 et seq.

Forest insects, pests and diseases, determi-

nation of infested areas, eradication and destruction, § 38-601 et seq.

Forest lands defined, § 38-101.

Forest practices act, § 38-1301 et seq.

Seeding of burned areas, § 38-501 et seq.

**38-707. Timber products — Marketing problems — Investigation and research.** — Investigation of and research into the problems connected with the conversion of forests into marketable products and the utilization of wood material to the highest economic advantage together with the reduction of waste through research into new uses of such waste materials customarily resulting from the conversion and manufacture of timber products shall be within the province of the authority of the forest, wildlife and range experiment station.

**History.**

1939, ch. 259, § 7, p. 643.

**38-708. Seeds and nursery stock for special plantings — Investigation and experimentation.** — The forest, wildlife and range experiment station is authorized to investigate possibilities and experiment with seeds, nursery stock and otherwise, independently and through cooperation with the agricultural experiment station, the various county agents of the state of Idaho, the federal government by means of the Clarke-McNary Nursery, and with private land owners, in the experimental production of suitable planting stock with the specific purposes in mind of developing

suitable tree species for farm wood production, for protection of farmstead buildings, and general windbreak and shelterbelt plantings, and for dry land plantings.

**History.**

1939, ch. 259, § 8, p. 643.

**STATUTORY NOTES**

**Cross References.**

Seed and plant certification by agricultural experiment station, §§ 22-1504 and 22-1505.

**38-709. Game and other wildlife — Investigation and research. —**

It shall be within the purpose of the forest, wildlife and range experiment station to investigate and conduct research into the propagation, protection, taking and productive management of game, fish, fur animals, birds and other wildlife in harmony with other major economic uses of land within the state of Idaho to the end that sportsmen, hunters and the general public, each in their own sphere, may be able to enjoy the presence of and the pursuit of game, fish and wildlife.

**History.**

1939, ch. 259, § 9, p. 643.

**RESEARCH REFERENCES**

**Am. Jur.** — 35 Am. Jur. 2d, Fish and Game, § 25.

**38-710. Forage and range resources upon wild and forest lands — Investigation and research. —** For the direct purpose of aiding in the management and perpetuation of forage resources so that such resources shall be of the highest use to the state in its support of agriculture, including the livestock industry of the state, and the general public, in their utilization of the forage resources found upon the wild and forest lands within the state of Idaho and without invading the fields of research and investigation designated as belonging to the work of the experiment station of the College of Agriculture [college of agriculture and life sciences] of the University of Idaho, the forest, wildlife and range experiment station is authorized to conduct investigations and research into the production, protection, utilization and management for continuous use of all forage and range resources found thereon, and the direct and indirect effects of the use of these resources upon erosion and watershed protection.

**History.**

1939, ch. 259, § 10, p. 643.

**STATUTORY NOTES**

**Cross References.**

Forest lands defined, § 38-101.

**Compiler's Notes.**

The bracketed insertion was added by the

compiler to reflect the current college names at the University of Idaho.

**38-711. Recommendations to administrative agencies — Publishing of information.** — It shall be the duty of and within the purpose of the forest, wildlife and range experiment station to make recommendations based upon studies and determinations, to the appropriate administrative agencies, concerning the production, management and utilization of the various resources to which the information shall apply and from time to time to publish and to distribute such information as shall be of interest and value to the industries and activities affected.

**History.**

1939, ch. 259, § 11, p. 643.

**38-712. Information, correspondence and data — Duty to guard.** — It shall be the duty of all officers and employees of the forest, wildlife and range experiment station, appointed or assigned, to guard carefully all confidential information accumulated in the progress of their work and such information shall be subject to disclosure according to chapter 3, title 9, Idaho Code; and to consider as property of the forest, wildlife and range experiment station all correspondence, notes, illustrations and data of any kind accumulated by them in the execution of the work of the experiment station delegated to them.

**History.**

1939, ch. 259, § 12, p. 643; am. 1990, ch. 213, § 33, p. 480.

**STATUTORY NOTES**

**Effective Dates.**

Section 111 of S.L. 1990, ch. 213 as amended by § 16 of S.L. 1991, ch. 329 provided that §§ 3 through 45 and 48 through

110 of the act should take effect July 1, 1993 and that §§ 1, 2, 46 and 47 should take effect July 1, 1990.

**38-713. Separability.** — If any provision of sections 38-701 — 38-713[, Idaho Code,] or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of sections 38-701 — 38-713[, Idaho Code,] are declared to be severable.

**History.**

1939, ch. 259, § 13, p. 643.

**STATUTORY NOTES**

**Compiler's Notes.**

This bill became a law on March 15, 1939, not having been signed by the governor, or filed, together with his objections, in the office of the secretary of state within ten days after the adjournment of the legislature.

The bracketed insertions were added by the compiler to conform to the statutory citation style.



**38-714. Creation of forest policy analysis group — Powers and duties.** — (1) There is hereby created within the Idaho forest, wildlife and range experiment station a “forest, range and wildlife policy analysis group.” The forest, range and wildlife policy analysis group shall be under the control of the dean of the college of forestry, wildlife and range sciences [college of natural resources] of the university of Idaho and shall have the following powers and duties:

(a) A program of continuing inquiry into such public policy issues as may be suggested by the advisory committee described in this act;

(b) The ability to provide timely, scientific and objective data and analysis pertinent to such resource and land use questions which are of general interest to the people of Idaho and which are suggested as worthy of the group’s attention by the advisory committee described herein. Each report of the group shall include a range of actions which might be taken to resolve the issues addressed in the group’s inquiries. In developing such alternatives, the director shall consult with a broad array of public agencies and other interests and shall show potential benefits and detrimental effects of each alternative, and;

(c) Analytical and informational services provided on a contractual basis to those public entities desiring such services in order to better reach more informed decisions regarding the wise use of Idaho’s forest, range and wildlife resources, including fish, wildlife, timber, water, outdoor recreation, forage and aesthetic values. Such contractual services may not be offered at rates less than the college’s actual costs for providing them and must adhere to the highest professional and scientific standards for objective, scientific research. The results of such contractual services provided by this group shall be considered to be public knowledge available to the citizens of Idaho.

(2) The dean of the college of forestry, wildlife and range sciences [college of natural resources], in a manner consistent with existing practice for hiring and electing faculty members to the college and its departments, shall as soon as practicable subsequent to the passage of this act, name a director of the forest policy analysis group. The director and staff shall have academic training and managerial skills appropriate to the college and the position and shall be compensated at a rate commensurate with their abilities and experience. The director and staff shall enjoy all protections of academic freedom and tenure that are consistent with general policies and practices of the college. Individual projects and analyses will be conducted by the group’s staff or members of the college’s faculty, or by scientists from other educational institutions or research entities as appropriate.

(3) The dean of the college of forestry, wildlife and range sciences [college of natural resources] shall name a forest policy advisory committee representative of the entities, both public and private, which have demonstrated interest in the areas of inquiry and conclusions of the group. Members of this committee shall serve without pay and under such terms of service as may be prescribed by the dean. It shall be the responsibility of the committee to review various forest policy issues and suggest the priority, critical focus and appropriateness of these issues for consideration by the forest policy analysis group. The total size of this committee shall not exceed

eleven (11) voting members. The dean shall also name a “technical advisory committee” consisting of faculty members and others with a demonstrated technical knowledge of issues or questions posed to the group to help provide guidance and expertise to each of the group’s inquiries.

(4) It shall be the duty of and within the purposes of the forest, wildlife and range experiment station to establish a forest policy analysis series in which to publish all results and findings, whether tentative or conclusive, regarding any and all of the group’s studies. Such publication shall be made freely, without prejudice and in a manner consistent with the highest professional, scientific, and ethical standards. In carrying out the provisions of this section, the director and staff of the forest policy analysis group shall seek the counsel and expertise and generally cooperate with other colleges within the state’s university system, plus other public or private research efforts.

**History.**

I.C., § 38-714, as added by 1989, ch. 206,  
§ 1, p. 506; am. 1994, ch. 194, § 1, p. 623.

**STATUTORY NOTES**

**Compiler’s Notes.**

The term “this act” at the end of subdivision (1)(a) refers to S.L. 1989, ch. 206, which is codified as this section.

The bracketed insertions in this section were added by the compiler to reflect the current college name at the University of Idaho.

Section 2 of S.L. 1989, ch. 206 provided that the act would become null and void on and after July 1, 1994. However, S.L. 1989, ch. 206, § 2 was repealed by S.L. 1994, ch. 194, § 2, and the act did not become null and void.

**CHAPTER 8**  
**FLOATING TIMBER**

**SECTION.**

- 38-801. Definition of timber.
- 38-802. Reclamation by owner.
- 38-803. Sale by sheriff.
- 38-804. Application of proceeds.
- 38-805. Rejection of claimant’s right — Disposition of proceeds.
- 38-806. Dams and booms — Limitation on construction.
- 38-807. Booms and weirs as nuisances —

**SECTION.**

- Abatement — Liability of owner.
- 38-808. Recording log brands — Penalty.
- 38-809. Prize logs — Sale at public auction.

**38-801. Definition of timber.** — The word “timber” is used in this chapter to designate all logs, boards, planks, lumber, railroad ties, poles, rails, posts, cordwood or beams, and whether in rafts or otherwise, but does not include the sort of wood commonly called driftwood.

**History.**

R.S., § 830; reen. R.C. & C.L., § 867; C.S.,  
§ 1295; I.C.A., § 37-301.

**38-802. Reclamation by owner.** — Whenever any timber drifts upon

any island in any of the waters of this state, or upon the bank of any such waters, the owner of the timber may remove it on paying or tendering to the owner or occupant of the land the amount of damages which he has sustained by reason thereof, and which may accrue in its removal; and if the parties can not agree as to the amount of such damages, either party may have the same appraised by two (2) disinterested citizens of the county, who may hear the proofs and determine the same at the expense of the owner of the timber.

**History.**

1885, p. 177, § 1; R.S., § 831; reen. R.C. & C.L., § 868; C.S., § 1296; I.C.A., § 37-302.

**JUDICIAL DECISIONS**

**Liability for Damages.**

Person using stream to float timber may be held liable in damages for injury to abutting

property resulting from his negligence. *Falk v. Humbird Lumber Co.*, 36 Idaho 1, 208 P. 404 (1922).

**RESEARCH REFERENCES**

**Am. Jur.** — 52 Am. Jur. 2d, Logs and Timber, §§ 85, 86.

**C.J.S.** — 54 C.J.S., Logs and Logging, §§ 2, 36, 37.

**38-803. Sale by sheriff.** — If the owner of such timber does not, within three (3) months from the time it was so drifted, take the same away, the owner or occupant of the land must deliver a bill of his charges and appraisement of damages, together with the timber, to the sheriff of the county, and thereafter the sheriff must sell the same after three (3) days' notice posted in three (3) public places of the precinct.

**History.**

R.S., § 832; reen. R.C. & C.L., § 869; C.S., § 1297; I.C.A., § 37-303.

**RESEARCH REFERENCES**

**Am. Jur.** — 52 Am. Jur. 2d, Logs and Timber, § 95 et seq.

**38-804. Application of proceeds.** — When sold, the proceeds of the timber must be applied, first, to the payment of the charges of the sale, and in liquidation of the expenses and damages awarded to the person entitled thereto; and the residue must be paid to the county treasurer, to be by him paid over to the owner, or his representative or assigns, on the production of satisfactory proof of ownership to the probate judge, and on his order therefor made within one (1) year after its receipt.

**History.**

R.S., § 833; reen. R.C. & C.L., § 870; C.S., § 1298; I.C.A., § 37-304.



## STATUTORY NOTES

**Compiler's Notes.**

The office of probate judge was abolished in 1969. See § 1-103.

## RESEARCH REFERENCES

**Am. Jur.** — 52 Am. Jur. 2d, Logs and Timber, § 105 et seq.

**C.J.S.** — 54 C.J.S., Logs and Logging, §§ 2, 36, 37.

**38-805. Rejection of claimant's right — Disposition of proceeds.** — The rejection by the probate judge of any claimant's right to such proceeds is conclusive, unless, within six (6) months thereafter, he commences action therefor. In case no claim is made or sustained to such proceeds, the same must, by the county treasurer, be placed in the common school fund of the county.

**History.**

R.S., § 834; reen. R.C. & C.L., § 871; C.S., § 1299; I.C.A., § 37-305.

## STATUTORY NOTES

**Compiler's Notes.**

The office of probate judge was abolished in 1969. See § 1-103.

**38-806. Dams and booms — Limitation on construction.** — No dam or boom must be hereafter constructed or permitted on any creek or river, unless said dam or boom has connected therewith a sluiceway, lock or fixture sufficient and so arranged as to permit timber to pass around, through or over said dam or boom without unreasonable delay or hindrance.

**History.**

1885, p. 177, § 6; R.S., § 835; reen. R.C. & C.L., § 872; C.S., § 1300; I.C.A., § 37-306.

## JUDICIAL DECISIONS

**Effect of Section.**

This section prohibits construction of any dam or boom, on any creek or river, which will unreasonably delay or hinder passage of floating timber. *Potlatch Lumber Co. v. Peterson*, 12 Idaho 769, 88 P. 426 (1906).

**Cited in:** *Northern Pac. R.R. v. Hirzel*, 29 Idaho 438, 161 P. 854 (1916).

## RESEARCH REFERENCES

**Am. Jur.** — 52 Am. Jur. 2d, Logs and Timber, § 75 et seq.

**38-807. Booms and weirs as nuisances — Abatement — Liability of owner.** — Any boom or weir in or over any creek or river so constructed as to prevent the passage of logs or lumber, is a public nuisance, which may

be abated unless a suitable sluiceway, lock or passage be made thereon, within thirty (30) days after written notice given by any person interested, and any person owning, holding or occupying such boom or weir is liable to pay five dollars (\$5.00) for every day the same remains in or over said creek or river, after thirty (30) days' notice to remove the same, and is liable for any damages sustained by individuals by reason of said boom or weir.

#### History.

1885, p. 177, § 7; am. R.S., § 836; reen. R.C. & C.L., § 873; C.S., § 1301; I.C.A., § 37-307.

### JUDICIAL DECISIONS

#### ANALYSIS

Erection of dams.

Liability for nuisance and damages.

Railroads impeding navigation.

#### Erection of Dams.

Every person has the right to float logs down any stream sufficient in volume to carry such commodity, but he has no right to trespass upon the lands through which stream flows and erect dams in such stream to increase volume of water for floating. A stream not capable of carrying logs without the construction of dams is not navigable for floating of logs. *La Veine v. Stack-Gibbs Lumber Co.*, 17 Idaho 51, 104 P. 666 (1909).

#### Liability for Nuisance and Damages.

One who constructs a boom or obstruction across navigable stream, in such a way as to prevent others driving logs past the boom or

obstruction, is liable to an action to abate same as a nuisance and for damages caused by its maintenance. *Powell v. Springston Lumber Co.*, 12 Idaho 723, 88 P. 97 (1906).

#### Railroads Impeding Navigation.

Railroad company building its tracks along course of stream and crossing it from time to time is chargeable with notice of its navigability for floating logs and must build its road in such way as not to unreasonably impede navigation. *Idaho N. Pac. R.R. v. Post Falls Lumber & Mfg. Co.*, 20 Idaho 695, 119 P. 1098 (1911).

### RESEARCH REFERENCES

**Am. Jur.** — 52 *Am. Jur.* 2d, *Logs and Timber*, § 75 et seq.

#### 38-808. Recording log brands — Penalty. — (1) Definitions:

(a) "Person" includes the plural and all corporations, foreign and domestic, copartnerships, firms and associations of persons.

(b) "Forest products." For the purposes of this section only, "forest products" means all products derived from trees including, but not limited to, saw logs, veneer logs, poles, cedar products, pulp logs, fence posts and every form into which a fallen tree may be cut before it is manufactured into lumber or run through a processing mill or cut into cordwood, stove wood or hewn ties.

(c) "Log brand" means a unique symbol or mark placed on or in forest products for the purpose of identifying ownership.

(2) Any owner of forest products in the state of Idaho may use thereon any log brand, which may be applied as a stamped symbol, log brand or affixed tag, not currently registered by any other person in the state; but before any such log brand shall be used, it shall be the duty of such owner intending to use the same to cause a diagram, and a full and complete written description of his log brand, signed by him, to be submitted on

"Registration of Log Brands" forms to the office of the Idaho board of scaling practices, who shall record the same upon receipt of a payment of twenty-five dollars (\$25.00), provided the log brand is different from any other log brand currently registered in that office. It shall be the duty of the person in charge of the Idaho board of scaling practices office to keep a record of all registered log brands, which record shall at all reasonable times be open to public inspection.

(3) All applications for log brands and/or renewals shall be submitted to and approved by the Idaho board of scaling practices prior to use. Such application shall be made on duplicate log brand registration forms and shall include a diagram or an impression of the log brand stamped on the form, a written description of the log brand and be signed by the person or the agent of the person. The Idaho board of scaling practices may refuse to approve any log brand which is identical to or closely resembles a currently registered log brand. If approval is denied, the applicant will select another log brand. No person shall brand any prize log.

(4) The expiration date for all log brands registered prior to January 1, 1981, shall be February 28, 1994; the expiration date for all log brands registered from January 1, 1981, through December 31, 1985, shall be February 28, 1995; the expiration date for all log brands registered from January 1, 1986 through December 31, 1989, shall be February 28, 1996; the expiration date for all log brands registered from January 1, 1990, through December 31, 1992, shall be February 28, 1997. Beginning January 1, 1993, renewals or newly approved registrations shall expire on February 28, five (5) years after the year of registration or renewal. Notification of expiration will be sent during the month of September of the year preceding the expiration date. A renewal fee of twenty-five dollars (\$25.00) shall be charged each time a log brand is renewed by the same person.

(5) To assign ownership of a currently registered log brand, the current registered owner of the log brand shall file with the Idaho board of scaling practices a signed and duly notarized instrument on forms provided by the board. Such forms shall specify the effective date of transfer, the assignee and the log brand to be assigned. A fee of twenty-five dollars (\$25.00) shall be charged for each transfer. The transferred log brand will be issued a new registration number and shall expire February 28, five (5) years after the year of the transfer.

Any failure to renew a log brand as required by law shall be deemed an abandonment of same. Abandoned or canceled log brands shall not be reissued for a period of one (1) year unless the Idaho board of scaling practices so authorizes for cause. Any other person may be at liberty to adopt or use the abandoned log brand; but the other person shall not claim or use it until after it has been registered in the other person's own name as provided by this section.

(6) Failure to comply with the provisions of this section shall be deemed a violation of the log brand law. Upon request of the Idaho board of scaling practices or its chairperson, it shall be the duty of the attorney general to institute and prosecute civil enforcement actions. In addition, when deemed by the board to be necessary, the board may retain private counsel to institute and prosecute civil enforcement actions. Any person who has been



determined to have violated the provisions of this chapter shall be liable for any expense, including reasonable attorney's fees, incurred by the state in enforcing the provisions of this chapter. Any violation of this section shall be deemed a misdemeanor and any person, upon conviction, shall be sentenced to pay a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).

**History.**

1973, ch. 198, § 1, p. 449; am. 1993, ch. 92,

§ 1, p. 219; am. 1995, ch. 177, § 1, p. 660; am. 2008, ch. 200, § 2, p. 646.

**STATUTORY NOTES****Cross References.**

Idaho board of scaling practices, § 38-1203.

**Amendments.**

The 2008 amendment, by ch. 200, throughout the section, substituted "Idaho board of

scaling practices" for "state board of scaling practices"; and in subsection (6), twice substituted "this section" for "section 38-808, Idaho Code" and twice substituted "this chapter" for "the act."

**38-809. Prize logs — Sale at public auction.** — All logs or timbers suitable for manufacture into lumber, ties, poles, or other timber products, not bearing a legally recorded mark or marks, which shall be placed aboard a transport vehicle for land transportation or placed afloat on a waterway, or permitted to be afloat upon any of the public waters of this state, not confined in booms or rafts, and all such logs or timbers bearing a legally recorded mark or marks not claimed within one (1) year after being placed in transit or afloat shall be prize logs, and no evidence of any private ownership thereof shall be admissible in any proceeding. Prize logs shall be sold by or under the direction of the Idaho board of scaling practices, and the proceeds of such sale, after deducting the expense of the sale and transportation or other charges incurred in getting said logs to the sale site shall go into the state scaling fund [account]. Such sale shall be at public auction after publication of notice of time and place thereof for not less than three (3) consecutive weeks in a newspaper of general circulation printed and published in the county in which the sale is to be held. It shall be the duty of every person having custody or possession of prize logs to deliver them to the Idaho board of scaling practices upon demand.

**History.**

1973, ch. 198, § 2, p. 449; am. 2008, ch. 200, § 3, p. 647.

**STATUTORY NOTES****Cross References.**

Idaho board of scaling practices, § 38-1203.  
State scaling account, § 38-1209.

**Amendments.**

The 2008 amendment, by ch. 200, twice substituted "Idaho board of scaling practices" for "state board of scaling practices."

**Compiler's Notes.**

The bracketed insertion was added by the compiler to supply the correct name of the referenced account.

## CHAPTER 9

### INSPECTION OF LUMBER

## SECTION.

38-901 — 38-913. [Repealed.]

**38-901 — 38-913. Inspection of lumber — Procedure. [Repealed.]**

## STATUTORY NOTES

**Compiler's Notes.**

These sections, which comprised S.L. 1903, p. 89, §§ 1 to 12; R.C. & C.L., §§ 1494 to 1505; C.S., §§ 2341 to 2351; 1919, ch. 11,

§§ 1, 2, p. 73; 1921, ch. 43, §§ 1, 2, p. 69; I.C.A., §§ 37-401 to 37-413, were repealed by S.L. 1967, ch. 328, § 8, effective January 1, 1968.

## CHAPTER 10

### STUMPAGE DISTRICTS

## SECTION.

38-1001. Corporate powers of stumpage districts.  
 38-1002. Petition for organization.  
 38-1003. Bond for costs if district not established.  
 38-1004. Notice of hearing.  
 38-1005. Hearing and order.  
 38-1006. Appointment of stumpage commissioners — Organization of board.  
 38-1007. Officers — Meetings.  
 38-1008. Vacancies.  
 38-1009. Compensation of commissioners.  
 38-1010. Preliminary survey.  
 38-1011. Duties of prosecuting attorney.  
 38-1012. Report of intention to do work — Notice of hearing.  
 38-1013. Order of confirmation — Assessment of benefits.

## SECTION.

38-1014. Assessments entered as tax liens — Installments.  
 38-1015. Appeals from assessments.  
 38-1016. Clearing of lands — Executive powers of board.  
 38-1017. Contract for clearing — Contractor's bonds.  
 38-1018. Payment to contractors.  
 38-1019. Warrants.  
 38-1020. Payment of warrants — Interest.  
 38-1021. Bonds authorized.  
 38-1022. Refunding bonds.  
 38-1023. Form of bonds — Interest.  
 38-1024. Levy for sinking fund.  
 38-1025. Payment of bonds.  
 38-1026. Levy for interest.  
 38-1027. Registration of bonds.

**38-1001. Corporate powers of stumpage districts.** — Any portion of a county requiring stumps removed from lands may be organized into a stumpage district, and when so organized such district shall be known and designated as stumpage district no. \_\_\_\_ of the county of \_\_\_\_ of the state of Idaho, shall have the right to sue and be sued by and in the name of its board of commissioners hereinafter provided for, shall have perpetual succession and shall adopt and use a seal. The commissioners hereinafter provided for and their successors in office shall, from the time of the organization of such stumpage district, have the power and it shall be their duty to manage and conduct the business and affairs of the said district and make and execute all necessary contracts for the stumping of any and all land in said district.

**History.**

1917, ch. 15, § 1, p. 33; compiled and reen.  
 C.L. 169:1; C.S., § 4556; I.C.A., § 37-501.

## STATUTORY NOTES

**Compiler's Notes.**

The provisions passed 1917, ch. 15, p. 33, by § 24, p. 42, repealed a prior law 1915, ch. 128, p. 273, which seems to have been the first

legislation on the subject. The law is apparently modeled after the drainage district law, § 42-2901 et seq.

**38-1002. Petition for organization.** — For the purpose of the formation of such stumpage district a petition shall be presented to the board of county commissioners of the county in which said proposed stumpage district is located, which petition shall set forth the object for the organization of the said district, shall designate the boundaries thereof and set forth therein approximately the number of acres of land to be stumped by the proposed stumpage system; and shall also contain the names of all the freeholders residing within said proposed district, so far as known, and the names and post-office addresses of all owners and mortgagees of land within said proposed district, so far as known, and shall contain a description of the land sought to have the stumps removed therefrom. Said petition shall be signed by a majority of the owners of the land in said proposed district and shall pray that the same be organized under the provisions of this chapter.

**History.**

1917, ch. 15, part of § 2, p. 34; reen. C.L. 169:2; C.S., § 4557; I.C.A., § 37-502.

**38-1003. Bond for costs if district not established.** — Said petitioners shall, at the time of filing of the petition, file a bond with the board of county commissioners of the county in which said proposed district is located, running to the state of Idaho, in the penal sum of \$100.00, with two or more sureties, to be approved by the county commissioners, conditioned that they will pay all costs in said district [if] for any reason same shall not be established.

In case said district be not established, then all costs and expenses shall be collectible on the bonds hereinbefore provided for, and any person having a charge against said district shall have a right of action thereon.

**History.**

1917, ch. 15, parts of §§ 2, 4, pp. 35, 36;

reen. C.L. 169:3; C.S., § 4558; I.C.A., § 37-503.

## STATUTORY NOTES

**Compiler's Notes.**

The bracketed insertion near the end of the

first paragraph was added by the compiler to supply an obviously missing word.

**38-1004. Notice of hearing.** — After filing said petition with the board of commissioners, the said board shall thereupon fix a time for hearing said petition by order made by them, which order shall provide the time and place said commissioners will hear said petition. A notice of said hearing must be served upon each one owning land in said proposed district, setting forth the time and place of hearing said petition.



**History.**

1917, ch. 15, § 3, p. 35; reen. C.L. 169:4;  
C.S., § 4559; I.C.A., § 37-504.

**STATUTORY NOTES****Cross References.**

Notice by mail, § 60-109A.

**38-1005. Hearing and order.** — Upon the hearing of said petition, as set forth in the last preceding section, the county commissioners of the county in which the said proposed stumpage district is located, if they find said proposed stumpage district will be a benefit to the majority in acreage of the lands included in the petition, shall declare said district duly organized, to be known as stumpage district no. \_\_\_\_ of the county of \_\_\_\_ , state of Idaho. In order to establish a stumpage district there must be not less than one hundred sixty (160) acres of land to be cleared.

The clerk of said county commissioners shall cause a copy of the order declaring said district to be organized, duly certified, to be filed in the county recorder's office of the county in which the said proposed district is organized, and from and after the date of said filing said organization shall be deemed complete.

**History.**

1917, ch. 15, parts of §§ 4, 13, pp. 35, 39; compiled and reen. C.L. 169:5; C.S., § 4560;  
I.C.A., § 37-505.

**38-1006. Appointment of stumpage commissioners — Organization of board.** — The county commissioners within ten (10) days thereafter shall appoint three (3) stumpage commissioners. The commissioners shall be appointed from among those owning land in the proposed district. The board of stumpage commissioners appointed as aforesaid shall be entitled to enter upon the duties of their office upon qualifying as county officers are required to qualify, and upon each stumpage commissioner giving a bond to the state of Idaho, for the benefit of said stumpage district, for the faithful performance of his duties as such commissioner, in the penal sum of \$1,000 with one (1) or more sureties, to be approved by the said board of county commissioners. The stumpage commissioners shall take oath of office and file their bonds within fifteen (15) days after they are appointed, and they shall hold office until their successors are duly appointed and qualified. Each stumpage commissioner thereafter who may be appointed shall enter into a like bond of like effect upon entering upon his duties, which bond shall be approved by the county commissioners. The bonds of the stumpage commissioners shall be filed and kept in the county recorder's office. Immediately after their appointment and their bonds have been filed and approved, the stumpage commissioners shall organize themselves into a board, and they shall by lot determine the terms of their office, which shall be one (1), two (2) and three (3) years, respectively. Annually thereafter the county commissioners of the county said district is located in shall appoint one (1) stumpage commissioner whose term of office shall be three (3) years.

**History.**

1917, ch. 15, parts of §§ 4 and 5, p. 35; reen.  
C.L. 169:6; C.S., § 4561; I.C.A., § 37-506.

**38-1007. Officers — Meetings.** — The board of commissioners of such district shall elect one of their number chairman and one (1) secretary and shall keep minutes of all their proceedings.

The stumpage commissioners shall hold their meetings for the transaction of business at any place in the county in which the district is located.

**History.**

1917, ch. 15, parts of §§ 6, 7, p. 36; com- piled and reen. C.L. 169:7; C.S., § 4562;  
I.C.A., § 37-507.

**38-1008. Vacancies.** — In case a vacancy or vacancies occur in said board by death, failure to appoint, failure to qualify, by resignation or failure to perform duties of one (1) or more of the members thereof, such vacancy or vacancies shall be filled at once by appointment by the county commissioners of the county in which said district is located, and said appointee shall serve for the unexpired term or until his successor is appointed and his bond approved.

**History.**

1917, ch. 15, part of § 8, p. 37; reen. C.L.  
169:8; C.S., § 4563; I.C.A., § 37-508.

**38-1009. Compensation of commissioners.** — The stumpage commissioners shall receive for their services the sum of three dollars (\$3.00) per day each and their necessary traveling expenses for each day they shall actually be engaged in the business of their office. The stumpage commissioners shall present an itemized account, under oath, to the county commissioners of the amounts due them, respectively, which items shall be audited at any regular meeting of said board of commissioners, and upon approval of the amounts, certified to be correct by said commissioners, warrants for said amounts against the stumpage district shall be issued in the usual manner, as other warrants are issued: provided, that warrants issued under this section shall, in addition to the usual signatures, be countersigned by the chairman of the board of county commissioners approving said warrants.

**History.**

1917, ch. 15, part of § 7, p. 36; reen. C.L.  
169:9; C.S., § 4564; I.C.A., § 38-509.

**38-1010. Preliminary survey.** — As soon as may be after the appointment of the commissioners of said district by the county commissioners the county commissioners shall engage the services of a registered surveyor or engineer who shall, for the purpose of compiling data to be presented to the commissioners of said district, make a survey, maps, estimate of costs of stumping and clearing, also any other data that may be necessary or required by said commissioners, at such fee as may be agreed upon between said registered surveyor or engineer and the county commissioners.



**History.**

1917, ch. 15, § 9, p. 37; compiled and reen. C.L. 169:10; C.S., § 4565; I.C.A., § 37-510;  
am. 1963, ch. 68, § 1, p. 260.

**STATUTORY NOTES****Cross References.**

County surveyor, § 31-2705 et seq.

**38-1011. Duties of prosecuting attorney.** — Upon application of the landowners by petition to the county commissioners for the organization of a stumping and clearing land district, the prosecuting attorney of said county shall draw up all papers, such as contracts and form of warrants, and act as the legal adviser of all officers, doing all legal work necessary in perfecting said stumping district and proposed work without charge.

**History.**

1917, ch. 15, § 10, p. 37; compiled and reen.  
C.L. 169:11; C.S., § 4566; I.C.A., § 37-511.

**STATUTORY NOTES****Cross References.**

Prosecuting attorney, § 31-2601 et seq.

**Compiler's Notes.**

The words "stumping and clearing," were enacted as "stumping and cleaning."

**38-1012. Report of intention to do work — Notice of hearing.** — If the stumpage commissioners shall find, after investigation, that the costs, expenses and damages are more than equal to the benefits that will be bestowed upon the lands to be benefited, they shall so report and the proceeding shall be dismissed. But if the stumpage commissioners shall report that the whole costs of the works, including preliminary surveys and expenses, will be less than the benefits received therefrom, they shall so report to the board of county commissioners, and the county commissioners shall then make and enter an order fixing a time and place when and where all persons interested may appear and contest the confirmation thereof, and the clerk of the board of county commissioners shall cause notices of the time and place of said hearing to be given to all parties interested by mailing a notice to each landowner mentioned in the petition at least ten (10) days before the day of hearing by depositing it in the United States post office, with postage prepaid.

**History.**

1917, ch. 15, § 11, p. 37; compiled and reen.  
C.L. 169:12; C.S., § 4567; I.C.A., § 37-512.

**38-1013. Order of confirmation — Assessment of benefits.** — Upon the entering of the order confirming the assessment for benefits as hereinbefore provided for, the clerk of the board of county commissioners shall immediately prepare a transcript which shall contain a list of all lands which have been assessed to be cleared of stumps in said district and the cost per acre and shall certify the same to the recorder of the county in which



said lands are situated, and said statement so certified shall specify the amount of the assessment upon each acre, parcel or governmental subdivision. The said county recorder shall thereupon enter such order of record and the same shall be notice of a lien by notice of said assessment to all persons.

**History.**

1917, ch. 15, part of § 12, p. 38; reen. C.L. 169:13; C.S., § 4568; I.C.A., § 37-513.

**38-1014. Assessments entered as tax liens — Installments.** — A similar transcript duly certified by the said clerk, which shall contain a list of the names of all persons and corporations benefited by said improvements and the amount of the assessment upon each acre, parcel or governmental subdivision shall be by said clerk filed with the auditor of the county, who shall immediately enter the same upon the tax rolls of his office, as provided by law for the entry of other taxes, against the land of each of the said persons named in the list, together with the amount thereof. The same shall be subject to the same interest and penalties in case of delinquency as in case of general taxes and shall be collected in the same manner as other taxes and subject to the same rights of redemption. The land sold for the collection of said taxes shall be subject to the same rights of redemption as lands sold for general taxes: provided, that the said assessment shall not become due and payable except at such time or times and in such amounts as may be designated by the stumpage commissioners of said stumpage district, which designation shall be made to the county auditor by said stumpage commissioners of said stumpage district by serving written notice upon the county auditor designating the same and the amount of the assessment, said assessment to be in proportion to the sums to become due and payable, which amount shall fall due at the time of the falling due of general taxes, and the amounts so designated shall be added by the auditor to the general taxes of said person, persons or corporation, according to said notice, upon the assessment rolls in his said office, and collected therewith: and, provided further, that no one call for assessment by said stumpage commissioners shall be in an amount to exceed ten per cent (10%) of the actual amount necessary to pay the cost of proceeding and the establishment of said district and the stumping of said land for each year after the commencement of said work of removing the stumps therefrom.

**History.**

1917, ch. 15, part of § 12, p. 38; reen. C.L. 169:14; C.S., § 4569; I.C.A., § 37-514.

**STATUTORY NOTES**

**Cross References.**

Tax collection, § 63-901 et seq.

**38-1015. Appeals from assessments.** — Every person or corporation feeling himself or itself aggrieved by the assessment for benefits may appeal

to the district court of said county in which said improvement district is located in the manner provided by law for appeals from any order of the county commissioners. Such appeal shall bring before the district court the justice of assessment of benefits in respect to the parties to the appeal.

**History.**

1917, ch. 15, § 23, p. 42; reen. C.L. 169:15; C.S., § 4570; I.C.A., § 37-515.

**STATUTORY NOTES****Cross References.**

Appeals from orders of county commissioners, §§ 31-1506.

**38-1016. Clearing of lands — Executive powers of board.** — Said board of stumpage commissioners hereinbefore provided for shall have the exclusive charge of the stumping and clearing of said land in said district which heretofore has been or may be hereinafter organized under the provisions of this title, and shall be the executive officers thereof with full power to bind such district by their acts in the performance of their duties as provided by law.

**History.**

1917, ch. 15, part of § 8, p. 37; reen. C.L. 169:16; C.S., § 4571; I.C.A., § 37-516.

**38-1017. Contract for clearing — Contractor's bonds.** — As soon as may be after the organization of a stumpage district and the report of a county surveyor with maps have [has] been received by the commissioners of said stumpage district, they shall proceed as soon as may be deemed expedient to let a contract for the stumping and clearing of said land in said district: provided, that said contract shall be let to the lowest bidder: provided further, that in case the whole or any portion of said land clearing is let to any contractor, said commissioners shall require the said contractor to give a bond equal to the amount of said contract so let, with two (2) or more sureties, to be approved by the board of commissioners of said stumpage district and running to said district as obligee therein, conditioned for the faithful performance of said contract: provided further, that said contractor shall pay or cause to be paid all just claims of all persons performing labor or rendering service in the stumping and clearing of said lands: provided, further, that the said contractor shall pay for all material, merchandise or provisions furnished of any kind or character and used by said contractor in the stumping and clearing of said lands: provided, further, that no sureties on said bond shall be liable thereon unless the person performing said labor and furnishing said material, merchandise and provisions shall, within ninety (90) days after the completion of said work, file his claim, duly verified that the same is just, due, and unpaid, with the board of commissioners of said stumpage district: provided, further, no contract shall be let before a notice shall be published in a newspaper in said county, at least in two (2) issues of said paper, asking for bids for said work.

**History.**

1917, ch. 15, § 14, p. 39; compiled and reen.  
C.L. 169:17; C.S., § 4572; I.C.A., § 37-517.

**STATUTORY NOTES****Cross References.**

Public contracts bond act, § 54-1925.  
Publication requirements, § 60-109.

of the section was added by the compiler to  
correct the syntax of the sentence.

**Compiler's Notes.**

The bracketed insertion near the beginning

**38-1018. Payment to contractors.** — During the construction of said improvements, said stumpage commissioners shall have the right to allow payments thereof in instalments, as the work progresses, in proportion to the amount of work completed: provided, that no allowance or payment shall be made for said work to any contractor or subcontractor to exceed seventy-five per cent (75%) of the proportionate amount of the work completed by such contractor or subcontractor, and twenty-five per cent (25%) of the contract price shall be reserved at all times by said stumpage commissioners until said work is wholly completed and shall not be paid, upon the completion of said work, until ninety (90) days have expired for the presentation of all claims for labor performed and materials furnished or used in the stumping of said land. Upon the completion of said work and the payment of all claims hereinbefore provided for, according to the terms and conditions of said contract, said commissioners shall accept said work and pay the contract price therefor.

**History.**

1917, ch. 15, § 15, p. 40; reen. C.L. 169:18;  
C.S., § 4573; I.C.A., § 37-518.

**38-1019. Warrants.** — The board of commissioners may issue warrants of such district in payment of claims of indebtedness against such district. Such warrants shall be in form and substance the same as county warrants, or as near the same as may be practicable, and shall draw interest (at) from the date of issue at a rate established by the board of commissioners. They must be signed by the chairman and attested by the secretary of said board: provided, that no warrant shall be issued by said board of commissioners in payment of any indebtedness of such district for less than the face or par value.

**History.**

1917, ch. 15, part of § 6, p. 36; reen. C.L.

169: 19; C.S., § 4574; I.C.A., § 37-519; am.  
1980, ch. 61, § 5, p. 118.

**STATUTORY NOTES****Compiler's Notes.**

The word "at" in the second sentence was enclosed in parentheses by the compiler as surplusage.

**Effective Dates.**

Section 14 of S.L. 1980, ch. 61 declared an emergency. Approved March 11, 1980.

**38-1020. Payment of warrants — Interest.** — All warrants issued



under the provisions of this chapter shall be presented by the holder thereof to the county treasurer, who shall indorse thereon the day of presentation for payment, with the additional indorsement thereof, in case of nonpayment, that they are not paid for want of funds; and no warrant shall draw interest under the provisions of this chapter until it is so presented and indorsed by the county treasurer. And it shall be the duty of such treasurer from time to time, when he has sufficient funds in his hands for that purpose, to advertise in a newspaper for the presentation to him for payment of the outstanding warrants as he may be able to pay: provided, that thirty (30) days after the first publication of said notice of the treasurer calling in any of said outstanding warrants said warrants shall cease to bear interest.

**History.**

1917, ch. 15, § 22, p. 42; reen. C.L. 169:20;  
C.S., § 4575; I.C.A., § 37-520.

**STATUTORY NOTES****Cross References.**

Nonpayment of warrants for want of funds,

indorsement, interest rate, §§ 31-2124, 31-2125.

**38-1021. Bonds authorized.** — Upon the establishment of any stumpage district under the provisions of this chapter and the establishment of a system of stumping lands therein as provided for in this chapter, the board of stumpage commissioners of such district are [is] hereby authorized to issue coupon bonds to pay for the total cost of the work and improvements incurred or to be incurred, or, of the part of the work and improvements assumed or contracted for, or to be assumed or contracted for, together with the costs of the organization of said district and the establishment thereof, including damages assessed and compensation made or to be made to the landowners for expense and costs of the entire proceedings, payable at a time not less than five (5) years nor longer than twenty (20) years from the date thereof: provided, that no bonds shall, under the provisions thereof, be sold for less than par value.

**History.**

1917, ch. 15, parts of § 16, pp. 40, 41; reen.  
C.L. 169:21; C.S., § 4576; I.C.A., § 37-521.

**STATUTORY NOTES****Compiler's Notes.**

The bracketed insertion near the beginning

of the section was added by the compiler to correct the syntax of the sentence.

**38-1022. Refunding bonds.** — Such stumpage commissioners may, at any time thereafter, issue such bonds in the manner and form herein prescribed for the purpose of funding any outstanding warrants or obligations of such district. In case of such last-named issue all the outstanding warrants shall immediately become due and payable upon receipt of the money by the county treasurer from the sale of said bonds and upon a call

of such outstanding obligations to be issued by him. Such call shall be made by the treasurer immediately upon the receipt of the proceeds from the sale of said bonds, by publication for two (2) weeks in a newspaper published in the county wherein said district is situated, and such warrants and outstanding obligations shall cease to draw interest at the end of thirty (30) days after the date of the first publication.

**History.**

1917, ch. 15, part of § 16, p. 40; reen. C.L. 169:22; C.S., § 4577; I.C.A., § 37-522.

**STATUTORY NOTES**

**Cross References.**

Publication requirements, § 60-109.

**38-1023. Form of bonds — Interest.** — Said bonds shall be numbered from one (1) upward, consecutively, and be in denomination of not less than \$100 nor more than \$500. They shall bear the date of issue, shall be made payable to the bearer in not more than twenty (20) years nor less than five (5) years from the date of their issue and bear interest payable annually, with coupons attached for each interest payment. The bonds and each coupon shall be signed by the chairman of the board of stumpage commissioners and shall be attested by the secretary of said board, and the seal of such district shall be affixed to each bond but not to the coupons.

**History.**

1917, ch. 15, § 17, p. 41; reen. C.L., 169:23;

C.S., § 4578; I.C.A., § 37-523; am. 1970, ch. 133, § 1, p. 309.

**38-1024. Levy for sinking fund.** — Five (5) years after said bonds have been issued the stumpage commissioners of said district issuing them are hereby authorized and required annually to levy an assessment sufficient to liquidate said bonds at maturity. Such assessment shall be collected by the official whose duty it is to collect taxes and kept as a separate fund for the sole purpose of liquidating said bonds in accordance with the provisions of the following section.

**History.**

1917, ch. 15, § 18, p. 41; reen. C.L. 169:24; C.S., § 4579; I.C.A., § 37-524.

**38-1025. Payment of bonds.** — It shall be the duty of the county treasurer of any county in which there may be a stumpage district issuing bonds under the provisions of this chapter, whenever he has upon hand \$2,000 of the special fund for the payment of said bonds and when said bonds shall have run for a period of five (5) years, to advertise in a newspaper for the presentation to him for payment of as many of the bonds issued under the provisions of this chapter as he is able to pay with the funds, to be paid in numerical order of said bonds, beginning with the bond number one, until all of said bonds are paid: provided, that thirty (30) days after the first publication of said notice of the treasurer calling in any of said bonds, said bonds shall cease to bear interest.

**History.**  
1917, ch. 15, § 19, p. 41; reen. C.L. 169:25;  
C.S., § 4580; I.C.A., § 37-525.

**38-1026. Levy for interest.** — It shall be the duty of such stumpage commissioners annually to levy an assessment against the land sufficient for the payment of the coupons hereinbefore mentioned as they fall due. Said coupons shall be considered for all purposes as warrants drawn upon the funds of the district issuing bonds under the provisions of this title, and when presented to the county treasurer after they are due the said treasurer must pay same out of the fund taking up said bonds and cancel the same, after which the same must be delivered over to the stumpage commissioners.

**History.**  
1917, ch. 15, § 20, p. 41; reen. C.L. 169:26;  
C.S., § 4581; I.C.A., § 37-526.

**38-1027. Registration of bonds.** — Before the bonds are delivered to the purchaser they shall be presented to the county treasurer, who shall register them in a book kept for that purpose and known as the bond register, in which register he shall enter the number of each bond, the date of issue, the maturity, amount and rate of interest, to whom and when payable, and the proceeds derived from the sale of said bonds shall, in all cases, be paid by the purchaser thereof to the county treasurer.

**History.**  
1917, ch. 15, § 21, p. 42; reen. C.L. 169:27;  
C.S., § 4582; I.C.A., § 37-527.

CHAPTER 11

SALE OF LUMBER PRODUCED OUTSIDE OF THE STATE

SECTION.	SECTION.
38-1101. Sale of lumber or lumber products produced outside of the state of Idaho.	38-1102. Penalty.

**38-1101. Sale of lumber or lumber products produced outside of the state of Idaho.** — It shall be unlawful for any individual or corporation to sell or offer for sale or dispose of, in any manner, any lumber or lumber products which have been imported into the state of Idaho from any foreign country without the same being plainly labeled in such a manner as to show the country from which said product came or in which they were produced.

**History.**  
1965, ch. 174, § 1, p. 358.

**38-1102. Penalty.** — Any person or persons violating any of the provisions of this act shall be deemed guilty of a misdemeanor and on conviction



thereof shall be fined not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100).

#### History.

1965, ch. 174, § 2, p. 358.

### STATUTORY NOTES

#### Compiler's Notes.

The words "this act" refer to S.L. 1965, ch. 174, which is compiled as §§ 38-1101 and 38-1102.

#### Effective Dates.

Section 3 of S.L. 1965, ch. 174, declared an emergency. Approved March 18, 1965.

## CHAPTER 12 LOG SCALING

#### SECTION.

- 38-1201. Log scaling practitioners — License requirement.
- 38-1202. Definitions.
- 38-1203. Idaho board of scaling practices — Members — Terms.
- 38-1204. Qualifications.
- 38-1205. Compensation.
- 38-1206. Removal — Vacancies.
- 38-1207. Meetings — Officers — Quorum.
- 38-1208. Adoption of rules and seal — Maintenance of office — Hearings — Penalties for contempt.
- 38-1209. Levy of assessment — Budget — Hearing — Funds — Bond of secretary — Salary.
- 38-1210. Record of proceedings — Register of applications for registration — Annual report to governor.
- 38-1211. Roster of licensed scalers.
- 38-1212. Applicants eligible for license.
- 38-1213. Application forms — Fee.
- 38-1214. Examinations — Certificate of registration.

#### SECTION.

- 38-1215. Checkscalers — Appointment — Checkscaling criteria — Report — Bond.
- 38-1216. Apprenticeship certificates — Temporary permits.
- 38-1217. Expiration of certificate of registration — Renewal — Fees.
- 38-1218. Revocation or suspension of certificate.
- 38-1219. Reissuance or reinstatement.
- 38-1220. Scaling methods used.
- 38-1220A. Inspection — Investigation — Violations — Enforcement — Penalty.
- 38-1221. Commencement of civil enforcement actions — Criminal actions and penalties authorized — Duties of attorney general and prosecuting attorneys.
- 38-1222. Appeal from checkscale to board — Appeal from board to court.

**38-1201. Log scaling practitioners — License requirement. —** Every person practicing or offering to practice log scaling as herein defined, shall submit evidence of his qualifications and be licensed as hereinafter provided; and it shall be unlawful for any person to practice or offer to practice log scaling where the scaled quantities derived from such scaling shall be used for commercial purposes in this state, unless such person has been duly licensed under the provisions of this act, or is an apprentice under the supervision of a licensed scaler.

#### History.

1969, ch. 91, § 1, p. 305; am. 1979, ch. 303, § 1, p. 822; am. 1998, ch. 87, § 1, p. 297.

### STATUTORY NOTES

#### Prior Laws.

Former §§ 38-1201 to 38-1207, which com-

prised S.L. 1967, ch. 328, §§ 1 to 7, p. 962, were repealed by S.L. 1969, ch. 91, § 25.

**Compiler's Notes.**

The words "this act" refer to S.L. 1969, ch. 91, which is compiled as §§ 38-1201 to 38-1220, 38-1221, and 38-1222.

**JUDICIAL DECISIONS**

**ANALYSIS**

Agreements.

Measurement methods limited.

**Agreements.**

Because no optional methods of measurement are available, a writing is not required for agreements relating to logging or hauling logged forest products. *Knopp v. Nelson*, 116 Idaho 343, 775 P.2d 657 (Ct. App. 1989).

§ 38-1202 limited the methods of measurement with respect to payment for logging or hauling logged forest products to gross weight or gross volume. *Knopp v. Nelson*, 116 Idaho 343, 775 P.2d 657 (Ct. App. 1989).

**Measurement Methods Limited.**

The 1979 amendments to this section and

**38-1202. Definitions.** — As used in this chapter, unless the context or subject matter requires otherwise:

(1) **Scaler and Professional Scaler.** A person who is qualified by reason of his knowledge of the principles of scaling acquired by professional education and/or practical experience, to engage in the practice of scaling forest products.

(2) **Scaling.** The quantitative measurement of logs or other forest products by means of a log rule. The term "scaling" shall include any professional scaling service rendered in connection with the measurement of forest products, or supervision of scaling when such service is rendered requiring the application of scaling principles and data.

(3) **Board.** The Idaho board of scaling practices.

**History.**

1969, ch. 91, § 2, p. 305; am. 1979, ch. 303, § 2, p. 822; am. 1991, ch. 175, § 1, p. 426; am.

1998, ch. 87, § 2, p. 297; am. 2008, ch. 200, § 4, p. 648.

**STATUTORY NOTES**

**Prior Laws.**

Former § 38-1202 was repealed. See Prior Laws, § 38-1206.

**Amendments.**

The 2008 amendment, by ch. 200, in the

introductory language, substituted "this chapter" for "this act"; redesignated former subsections (a), (b), and (c) as (1), (2), and (3); and in subsection (3), substituted "Idaho board of scaling practices" for "state board of scaling practices."

**JUDICIAL DECISIONS**

**DECISIONS UNDER PRIOR LAW**

**ANALYSIS**

Mandatory language.

Measurement methods limited.

Payment calculated on gross weight scale.

**Mandatory Language.**

The language in former subdivision (c) of this section was mandatory; accordingly, it

requires payment, for forest products hauled and delivered, to be based on gross weight or gross volume (gross scale) and not on net

scale. *Knopp v. Nelson*, 116 Idaho 343, 775 P.2d 657 (Ct. App. 1989).

**Measurement Methods Limited.**

The 1979 amendments to § 38-1201 and former subsection (c) of this section limited the methods of measurement with respect to payment for logging or hauling logged forest products to gross weight or gross volume. *Knopp v. Nelson*, 116 Idaho 343, 775 P.2d 657 (Ct. App. 1989).

**Payment Calculated on Gross Weight Scale.**

Former subdivision (c) of this section does not prohibit a merchantability standard from being imposed upon products where the contract provides that payment shall be calculated on a gross weight scale. *Toivo Pottala Logging, Inc. v. Boise Cascade Corp.*, 112 Idaho 489, 733 P.2d 710 (1987).

**38-1203. Idaho board of scaling practices — Members — Terms. —**

A board to be known as the "Idaho board of scaling practices" is hereby created in the department of lands. It shall consist of the director of the department of lands and five (5) members appointed by the governor from among nominees recommended by the organized and generally recognized forest industry associations or individuals representing nonindustrial private forest landowners provided not less than two (2) board members be appointed from the intermountain forest association, and not less than two (2) board members be appointed from the associated logging contractors of Idaho, inc., each association to have one (1) member from north of the Salmon river and one (1) member from south of the Salmon river. One (1) member shall be appointed to represent the interests of nonindustrial private forest landowners throughout the state. That person shall be chosen from nominees provided to the governor by the Idaho forest owner's association. The person representing nonindustrial private forest landowners shall own not less than one hundred (100) nor more than five thousand (5,000) acres of private forest land and shall not own or control a forest products manufacturing facility within the state. In choosing this person, the governor shall give preference to persons with a demonstrated history of selling timber or logs to a variety of purchasers and who have scaling or forest management experience. The members of the board shall have the qualifications required by section 38-1204, Idaho Code. The members of the board shall be appointed for a three (3) year term. Each member of the board shall take, subscribe and file the oath required by sections 59-401 through 59-408, Idaho Code, before entering upon the duties of his office. On the expiration of the term of any member, his successor shall be appointed in like manner by the governor for a term of three (3) years and unexpired terms shall be filled for the unexpired balance of the term.

**History.**

1969, ch. 91, § 3, p. 305; am. 1972, ch. 114, § 1, p. 229; am. 1974, ch. 17, § 20, p. 308; am.

1986, ch. 330, § 1, p. 812; am. 1999, ch. 120, § 1, p. 357; am. 2008, ch. 200, § 1, p. 645.

**STATUTORY NOTES**

**Cross References.**

Director of department of lands, § 58-105.

**Prior Laws.**

Former § 38-1203 was repealed. See Prior Laws, § 38-1201.

**Amendments.**

The 2008 amendment, by ch. 200, in the section catchline and in the first sentence, substituted "Idaho board of scaling practices" for "state board of scaling practices"; and in the second sentence, substituted "the inter-



mountain forest association” for “the Idaho forest industry council.”

**Compiler’s Notes.**

For further information about the intermountain forest association, see <http://ifia.com>.

For further information about the associated logging contractors, inc., see <http://www.idahologgers.com>.

For further information about the Idaho forest owners association, see <http://idahoforestowners.org>.

**Effective Dates.**

Section 2 of S.L. 1972, ch. 114 provided that the act should take effect on and after July 1, 1972.

**38-1204. Qualifications.** — Appointive members of the board shall be citizens of the United States and residents of this state, and they shall have been regularly engaged in the timber products industry for at least five (5) years, and at least two (2) of whom shall have had experience in or knowledge of the practice of scaling.

**History.**

1969, ch. 91, § 4, p. 305; am. 2008, ch. 201, § 1, p. 649.

**STATUTORY NOTES**

**Prior Laws.**

Former § 38-1204 was repealed. See Prior Laws, § 38-1201.

**Amendments.**

The 2008 amendment, by ch. 201, inserted “or knowledge of” near the end of the section.

**38-1205. Compensation.** — Each member of the board shall be compensated as provided in section 59-509(g), Idaho Code.

**History.**

1969, ch. 91, § 5, p. 305; am. 1979, ch. 311,

§ 1, p. 841; am. 1980, ch. 247, § 31, p. 582; am. 1986, ch. 330, § 2, p. 812.

**STATUTORY NOTES**

**Prior Laws.**

Former § 38-1205 was repealed. See Prior Laws, § 38-1201.

**38-1206. Removal — Vacancies.** — The governor may remove any member of the board for misconduct, incompetency, neglect of duty, or for any other sufficient cause. Vacancies in the membership of the board shall be filled for the unexpired term by appointment by the governor as provided in section 38-1203[, Idaho Code].

**History.**

1969, ch. 91, § 6, p. 305.

**STATUTORY NOTES**

**Prior Laws.**

Former § 38-1206 was repealed. See Prior Laws, § 38-1201.

compiler to conform to the statutory citation style.

**Compiler’s Notes.**

The bracketed insertion was added by the

**38-1207. Meetings — Officers — Quorum.** — The board shall hold a

meeting within thirty (30) days after its members are first appointed and thereafter shall hold at least two (2) regular meetings each year. The rules may provide for such additional regular meetings and for special meetings. Notice of all meetings shall be given as may be provided in the rules. The director of the department of lands shall be chairman of the Idaho board of scaling practices and the board shall annually elect a vice-chairman and a secretary, who shall be members of the board. Four (4) members shall constitute a quorum.

**History.**

1969, ch. 91, § 7, p. 305; am. 1970, ch. 185, § 1, p. 534; am. 1974, ch. 17, § 21, p. 308; am.

1979, ch. 311, § 2, p. 841; am. 2003, ch. 95, § 1, p. 280; am. 2008, ch. 200, § 5, p. 648.

**STATUTORY NOTES**

**Cross References.**

Director of department of lands, § 58-105.

**Prior Laws.**

Former § 38-1207 was repealed. See Prior Laws, § 38-1201.

**Amendments.**

The 2008 amendment, by ch. 200, substituted "Idaho board of scaling practices" for "state board of scaling practices".

**38-1208. Adoption of rules and seal — Maintenance of office — Hearings — Penalties for contempt.** — The board shall have the power to adopt and amend rules and regulations as provided in chapter 52, title 67, Idaho Code, and such rules and regulations, not inconsistent with the constitution and laws of this state, which may be reasonably necessary for the proper performance of its duties and the administration of the act. It shall adopt and have an official seal. It shall have power to hire employees, provide and equip an office as may be reasonably necessary for the proper performance of its duties.

The board shall have the power and duty to administer provisions of this act and may under the hand of its chairman and the seal of the board, subpoena witnesses and compel their attendance, and may require the production of books, papers, and other documents in any case or proceeding involving the revocation or suspension of a license issued under authority of this act or the practice or offer to practice scaling without a license in the state of Idaho. Any member of the board may administer oaths or affirmations to witnesses appearing before the board. If any person shall refuse to obey any subpoena so issued, or shall refuse to testify or produce any books, papers, or documents, the board may present its petition to the district judge of the district in which the witness may be found, setting forth the proceedings theretofore taken by the board to subpoena the witness and the failure of the witness to attend and briefly stating the subject matter upon which the testimony of the witness is required by the board; thereupon, such district judge may cause an order to be issued, requiring such witness to appear before the board to testify and to produce such books, papers and other documents as may be deemed necessary and pertinent by the board. Any person failing or refusing to obey such order shall be punished as for contempt of court, and any person failing to obey the subpoena of the board shall be guilty of a misdemeanor and shall be punished accordingly.

**History.**

1969, ch. 91, § 8, p. 305; am. 1970, ch. 185,  
§ 2, p. 534.

**STATUTORY NOTES****Cross References.**

Contempt, § 7-601 et seq.

**Compiler's Notes.**

The term "this act" at the end of the first sentence in the first paragraph refers to S.L. 1969, ch. 91, which is codified as §§ 38-1201 to 38-1220, 38-1221, and 38-1222. Probably the reference should be to "this chapter", being chapter 12, title 38, Idaho Code.

The term "this act", used twice in the first sentence in the second paragraph, refers to S.L. 1970, ch. 185, which is codified as §§ 38-1207 to 38-1209, 38-1215, 38-1218, and 38-1222. Probably the reference should be to "this chapter", being chapter 12, title 38, Idaho Code.

**38-1209. Levy of assessment — Budget — Hearing — Funds — Bond of secretary — Salary.** — (a) The board is hereby authorized and directed to levy an assessment on the scale of all forest products harvested within the state of Idaho in an amount not to exceed twenty cents (20¢) per thousand (1,000) board feet or twelve cents (12¢) per cunit, and no such assessment shall be levied more than once on any forest product except as herein expressly provided. The board shall set times and places for its meetings and shall hold not less than two (2) meetings in each calendar year. The board shall designate a meeting date on which a budget shall be adopted and assessment shall be levied. Notice of such meeting shall be given thirty (30) days prior thereto in a newspaper of general circulation throughout the state. The board shall designate and levy an assessment as herein provided to raise moneys necessary to fund operations of the board and the state scaling program established by this chapter based upon the budget adopted and notice of such levy shall be given in the notice of the budget. The budget and assessment shall become effective upon adoption by the board. In the event a written request is made therefor by any interested person within thirty (30) days after notice of the budget and assessment has been published, the board shall set a time and place for a hearing at which any person may submit recommendations for changes in the budget and the assessment. Thereafter the board shall either confirm or modify the budget and assessment and cause notice of such action to be published in a newspaper of general circulation throughout the state within ten (10) days after such action. If the budget or the assessment is modified, the modification shall become effective upon publication. Such hearing shall be held not later than thirty (30) days after receipt of a written request therefor.

(b) The assessment herein provided shall be levied against, and paid by both, the timber owner and the timber purchaser, provided that no assessment shall be levied against the timber owner on forest products harvested from lands owned by the United States of America or the state of Idaho. Said assessment shall be levied twice in an equal amount, once against the timber owner and once against the timber purchaser. The term "purchaser" as used herein shall also include the owner of the timber where the owner processes or utilizes the forest products in its operations or where the owner sells forest products outside the state of Idaho and the forest products are scaled within the state of Idaho, provided that the assessment provided in



this chapter shall not be levied against the United States of America, nor the state of Idaho, nor any unit nor agency thereof. The timber purchaser shall withhold any assessment money owed by the timber owner and said money so withheld shall be paid to the board. All assessment money shall be transmitted by the timber purchaser to the board on or before the twentieth day of each month for all timber harvested during the previous month.

(c) The secretary of the board shall receive and account for all moneys derived under the provisions of this act, and shall pay the same monthly to the state treasurer, who shall keep such moneys in a separate account to be known as the "state scaling account," which is hereby created in the state treasury. Such account shall be kept separate and apart from all other moneys in the treasury, and shall be paid out only on approval of the board. All moneys in the "state scaling account" are hereby continually appropriated for the use of the board. The board may establish, maintain and use a rotary fund as provided by state law. The secretary of the board shall give a surety bond to the state in such sum as the board may determine. The premium on said bond shall be regarded as a proper and necessary expense of the board, and shall be paid out of the "state scaling account." The secretary of the board shall receive such salary as the board shall determine in addition to the compensation and expenses provided in section 38-1205, Idaho Code. The board may employ such clerical or other assistants as are necessary for the proper performance of its work, and may make expenditures of this account for any purpose which in the opinion of the board is reasonably necessary for the proper performance of its duties under this act. All warrants on said "state scaling account" shall be drawn by the state controller on vouchers by the board and the state board of examiners.

**History.**

1969, ch. 91, § 9, p. 305; am. 1970, ch. 185, § 3, p. 534; am. 1979, ch. 311, § 3, p. 841; am. 1980, ch. 66, § 1, p. 136; am. 1987, ch. 196, § 1, p. 408; am. 1989, ch. 242, § 1, p. 590; am.

1991, ch. 175, § 2, p. 426; am. 1993, ch. 130, § 1, p. 325; am. 1994, ch. 180, § 68, p. 420; am. 2005, ch. 29, § 1, p. 140; am. 2010, ch. 91, § 1, p. 176.

**STATUTORY NOTES****Cross References.**

State board of examiners, § 67-2001 et seq.  
State controllers, § 67-1001 et seq.

**Amendments.**

The 2010 amendment, by ch. 91, in the first sentence in subsection (a), substituted "and no such assessment shall be levied" for "provided that no such assessment shall be levied," and added the exception; and in subsection (b), in the first sentence, inserted "both, the timber owner and" and "timber," and added the proviso, added the second sentence, in the third sentence, inserted "nor the state of Idaho," added the fifth sentence, and in the last sentence, substituted "All assessment money shall be transmitted by the timber purchaser to the board" for "The assessment shall be transmitted to the board."

**Compiler's Notes.**

The words "this act" refer to S.L. 1969, ch. 91, which is compiled as §§ 38-1201 to 38-1220, 38-1221, and 38-1222.

**Effective Dates.**

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the names of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 68 of S.L. 1994, ch. 180 became effective January 2, 1995.

**38-1210. Record of proceedings — Register of applications for registration — Annual report to governor.** — The board shall keep a record of its proceedings and a register of all applications for registration, which register shall show (a) the name, age and residency of each applicant; (b) the date of the application; (c) the place of business of such applicant; (d) his qualifications as a scaler; (e) whether the applicant was rejected; (f) whether a certificate of registration was granted; (g) the dates of the action of the board; and (h) such other information as may be deemed necessary by the board.

The records of the board shall be prima facie evidence of the proceedings of the board set forth therein, and a transcript thereof, duly certified by the secretary of the board under seal, shall be admissible in evidence with the same force and effect as if the original were produced. Annually the board shall submit to the governor a report of its transactions of the preceding year, and shall also transmit to him a complete statement of the receipts and expenditures of the board, attested by affidavits of its chairman and its secretary.

**History.**

1969, ch. 91, § 10, p. 305.

**38-1211. Roster of licensed scalers.** — A roster showing the names and places of business of all licensed scalers shall be published by the secretary of the board during the month of December of each year. Copies of this roster shall be mailed to each person so registered, and furnished to the public upon request.

**History.**

1969, ch. 91, § 11, p. 305; am. 1991, ch. 30, § 7, p. 58.

**STATUTORY NOTES**

**Compiler's Notes.**

Section 16 of S.L. 1991, ch. 30 read "DISPOSITION OF RECORDS. (a) Whenever this act has struck a requirement for filing a type of document with the secretary of state which was duplicated by filing with another state agency, the secretary of state may destroy those documents in his files.

"(b) Whenever this act has struck a requirement for filing a type of document with the secretary of state which was not duplicated by filing with another state agency, the

secretary of state may transfer those documents to the state historical library if it is determined that they have historical significance, and otherwise may destroy them.

"(c) Whenever this act has transferred the place of filing for a type of document from the secretary of state to another agency, the secretary of state and the head of the other agency may thereafter agree to transfer those documents filed before the effective date of this act to the agency which has acquired filing responsibility."

**38-1212. Applicants eligible for license.** — Except as herein otherwise expressly provided, no license shall be issued until an applicant has successfully passed an examination given by or under the supervision of the board, nor shall a license be issued to an applicant having habits or character that would justify revocation or suspension of his certificate.

Each applicant must furnish minimum evidence that he is qualified to take the examination as required by this act. In addition the applicant must

furnish evidence satisfactory to the board that the applicant possesses knowledge and skill of a character satisfactory to the board and indicating that the applicant is competent to practice scaling.

Any person having the necessary qualifications prescribed in this act to entitle him to be licensed as a log scaler shall be eligible for such registration although he may not be practicing his profession at the time of making his application.

**History.**

1969, ch. 91, § 12, p. 305.

**STATUTORY NOTES**

**Compiler's Notes.**

The words "this act" refer to S.L. 1969, ch.

91, which is compiled as §§ 38-1201 to 38-1220, 38-1221, and 38-1222.

**38-1213. Application forms — Fee.** — Applications for registration shall be on forms prescribed and furnished by the board. The application shall be made under oath, and shall show the applicant's education, experience and a detailed summary of his technical work; and the applicant shall furnish not less than three (3) references.

The registration fee for professional scalers shall be twenty-five dollars (\$25.00) which shall accompany the application for examination.

**History.**

1969, ch. 91, § 13, p. 305; am. 1986, ch. 330, § 3, p. 812.

**38-1214. Examinations — Certificate of registration.** — Examinations shall be held at such times and places as the board shall determine. Examinations shall be required on fundamental scaling subjects.

The scope of the examination shall be prescribed by the board with special emphasis to the applicant's ability to perform scaling. A candidate failing his first examination may apply for re-examination at any regular examination time without filing a new application and shall be entitled to such re-examination on payment of an additional fee of twenty-five dollars (\$25.00). A candidate who fails on re-examination must file a new application before he can again be admitted to examination, and such new application shall not be filed prior to thirty (30) days following the date of the last examination taken by the applicant.

The board shall issue a certificate of registration upon payment of registration fee as provided for in this act, to any applicant who, in the opinion of the board, has satisfactorily met all of the requirements of this act. Certificates of registration shall show the full name of the registrant, shall give a serial number, and shall be signed by the chairman and the secretary of the board under seal of the board.

The issuance of a certificate of registration by the board shall be prima facie evidence that the person named therein is entitled to all the rights and privileges of a registered professional log scaler and is licensed to scale under the act.



**History.**

1969, ch. 91, § 14, p. 305; am. 1986, ch. 330,  
§ 4, p. 812.

**STATUTORY NOTES****Compiler's Notes.**

The words "this act" refer to S.L. 1969, ch. 91, which is compiled as §§ 38-1201 to 38-1220, 38-1221, and 38-1222.

**38-1215. Checkscalers — Appointment — Checkscaling criteria — Report — Bond.** — The director of the department of lands shall, with approval of the board, appoint such qualified licensed scalers as checkscalers as may be needed to perform checkscaling within the state. Checkscalers employed by the state of Idaho shall be nonclassified employees, and shall be exempt from the provisions of chapter 53, title 67, Idaho Code. Criteria for conducting such checkscaling and a minimum number of logs and/or volume to be considered adequate for a valid checkscale shall be determined by the board, and shall guide the appointed scaler in performance of his checkscaling duties. The cost of all checkscales other than in the regular course of the checkscaler's duties shall be paid by the person requesting the same or by the party in error where the checkscaler finds and determines scaling error outside the allowable limits set by the board. All checkscaling costs shall be determined by using the costs of checkscaling at the time of request as determined by the board. The checkscaler shall make a report of his findings to the board within a reasonable time after each checkscale and said report shall be accepted as prima facie evidence of the facts stated in such report. Any person directly affected by said report shall be entitled to receive a copy of said report as soon as the checkscale has been completed.

All checkscalers appointed by the board shall obtain and execute a bond to the board for the benefit of those businesses and/or persons using the services of the checkscaler covering the performance of his checkscaling duties, which bond shall be in the sum of one thousand dollars (\$1,000), executed by a qualified surety, duly authorized to do business in this state, upon the condition that said applicant, if said bond be issued to him, shall conduct his checkscaling duties without fraud or fraudulent misrepresentation and will faithfully perform his duties as a checkscaler for those persons using his services; said bond to be reissued annually on or before the 1st day of July each year, and said bond shall be filed with the board.

The premium on said checkscalers' bonds shall be regarded as a proper and necessary expense of the board, and shall be paid out of the "state scaling account."

**History.**

1969, ch. 91, § 16, p. 305; am. 1970, ch. 185, § 4, p. 534; am. 1974, ch. 17, § 22, p. 308; am. 1979, ch. 139, § 1, p. 435.

## STATUTORY NOTES

**Cross References.**

Director of department of lands, § 58-105.  
State sealing account, § 38-1209.

act should be in full force and effect on and after July 1, 1974.

**Effective Dates.**

Section 75 of S.L. 1974, ch. 17 provided the

## JUDICIAL DECISIONS

**Cited in:** Jones v. State Bd. of Medicine, 97 Idaho 859, 555 P.2d 399 (1976).

**38-1216. Apprenticeship certificates — Temporary permits. —**

The board shall establish and prescribe the criteria and basis for issuing apprenticeship certificates and for issuing temporary permits; provided, however, that an apprentice shall be authorized to scale only under the direct supervision of a licensed scaler and temporary permits may be issued only where there are no available scalers in the area and the surrounding circumstances warrant the issuance of a temporary permit. Temporary permits may be issued for such time periods and at such fee as may be determined by the board, provided, however, that a temporary permit shall not be issued for a period of time in excess of three (3) months. Apprenticeship certificates shall require the apprentice to scale as an apprentice for a period of ninety (90) working days and at the expiration of said ninety (90) day period to take the licensed scalers examination as in this act provided.

**History.**

1969, ch. 91, § 17, p. 305.

## STATUTORY NOTES

**Compiler's Notes.**

The words "this act" refer to S.L. 1969, ch.

91, which is compiled as §§ 38-1201 to 38-1220, 38-1221, and 38-1222.

**38-1217. Expiration of certificate of registration — Renewal — Fees. —** Certificates of registration shall expire two (2) years from the last day of June following their issuance or renewal and shall become invalid on that date unless renewed.

As a condition of renewal, a person shall be required to pass an examination as established by the board and pay a renewal fee of twenty-five dollars (\$25.00).

**History.**

1969, ch. 91, § 18, p. 305; am. 1979, ch. 311, § 4, p. 841; am. 1986, ch. 330, § 5, p. 812.

**38-1218. Revocation or suspension of certificate. —** The board shall have power to (1) revoke the certificate of registration or, (2) to suspend the certificate of registration for a period of time not exceeding two (2) years, of any registrant who is found guilty of:

(a) The practice of any fraud or deceit in obtaining a certificate of registration;

(b) Gross negligence, incompetency, habitual intemperance, insanity, conviction of a felony, moral turpitude, or misconduct in the practice of professional scaling as a registered professional scaler.

Any person may prefer charges, based on any of the above grounds, against any registrant. Such charges shall be in writing, and shall be sworn to by the person making them and shall be filed with the secretary of the board.

All charges, unless dismissed by the board as unfounded or trivial, shall be heard by the board as soon as possible but not to exceed three (3) months after the date on which they shall have been preferred.

The time and place for said hearing shall be fixed by the board and a copy of the charges, together with a notice of the time and place of hearing, shall be personally served on, or mailed to the last known address of, such registrant, at least thirty (30) days before the date fixed for the hearing. At any hearing, the accused registrant shall have the right to appear personally and by counsel, to cross-examine witnesses in his own defense.

If, after such hearing, three (3) or more members of the board vote in favor of finding the accused guilty, the board shall revoke or suspend, as herein provided, the certificate of registration of such registered professional scaler.

In addition to the foregoing, provisions contained in chapter 52, title 67, Idaho Code, shall also apply.

**History.**

1969, ch. 91, § 19, p. 305; am. 1970, ch. 185,  
§ 5, p. 534.

**38-1219. Reissuance or reinstatement.** — The board, for reasons it may deem sufficient, may reissue or reinstate a certificate of registration to any person whose certificate has been revoked or suspended, provided three (3) or more members of the board vote in favor of such reissuance or reinstatement. A new certificate of registration, to replace any certificate revoked, lost, destroyed or mutilated, may be issued, subject to the rules of the board, and upon payment of such reasonable charge therefor as shall be fixed by the board to cover the estimated cost of investigation and such reissuance, but not exceeding twenty-five dollars (\$25.00) in any case.

**History.**

1969, ch. 91, § 20, p. 305; am. 1979, ch. 311,  
§ 5, p. 841.

**38-1220. Scaling methods used.** — (a) The method of scaling the various forest products for commercial purposes shall be in accordance with the board's administrative rules.

(b) For the purpose of payment for logging or hauling logged forest products only, forest products shall be measured by gross weight, or by gross volume converted to gross decimal "C" or gross cubic volume.

(c) Forest products scaled or otherwise measured by or for any agency of the United States government shall not be affected by this act. The licensing and bonding provisions of this act do not apply to any person measuring logs



for any agency of the United States government, unless such agency so elects.

(d) Measurement may be determined by a sampling process.

#### **History.**

1969, ch. 91, § 21, p. 305; am. 1979, ch. 311, § 6, p. 841; am. 1998, ch. 87, § 3, p. 297.

### **STATUTORY NOTES**

#### **Compiler's Notes.**

The words "this act" refer to S.L. 1969, ch. 91, which is compiled as §§ 38-1201 to 38-1220, 38-1221, and 38-1222.

Section 7 of S.L. 1979, ch. 311 read: "The amendments to Section 38-1220, Idaho Code, as made by Section 3 of Senate Bill No. 1108,

[ch. 303] as amended, First Regular Session, Forty-fifth Idaho Legislature, shall be disregarded by the Idaho Code Commission, and the amendments to Section 38-1220, Idaho Code, as herein enacted, shall be the only amendments compiled."

### **JUDICIAL DECISIONS**

#### **Writing Not Required.**

Because no optional methods of measurement are available, a writing is not required

for agreements relating to logging or hauling logged forest products. *Knopp v. Nelson*, 116 Idaho 343, 775 P.2d 657 (Ct. App. 1989).

**38-1220A. Inspection — Investigation — Violations — Enforcement — Penalty.** — (a) The chairman of the Idaho board of scaling practices shall cause investigations to be made upon the request of the board or upon receipt of information concerning an alleged violation of this chapter or of any rule, order or license issued or promulgated thereunder, and may cause to be made such other investigations as the chairman shall deem advisable.

(b) The chairman or the chairman's designee shall have the authority to:

(1) Conduct a program of continuing surveillance and of regular or periodic inspection of log scaling sites.

(2) Enter at all reasonable times upon any private or public property for the purpose of inspecting or investigating to ascertain possible violations of this chapter or of any rule, order or license issued or promulgated thereunder.

(c) Whenever the chairman determines that any person or legal entity is in violation of any provisions of this chapter or any rule, order or license issued or promulgated pursuant to this chapter, the chairman may initiate a civil enforcement action through the attorney general and/or a criminal action through the prosecuting attorney as provided in section 38-1221, Idaho Code. Civil enforcement actions shall be commenced and prosecuted in the district court in and for the county in which the alleged violation occurred, and may be brought against any person or legal entity who is alleged to have violated any provisions of this chapter or any rule, order or license which has become effective pursuant to this chapter. Such action may be brought to compel compliance with any provisions of this chapter or any rule, order or license issued or promulgated hereunder and for any relief or remedies authorized in this chapter. Except as provided in section 38-1218, Idaho Code, the chairman shall not be required to initiate or prosecute an administrative action before initiating a civil enforcement action.

(d) Any person or legal entity determined in a civil enforcement action to have violated any provision of this chapter or any rule, order or license issued or promulgated pursuant to this chapter shall be liable for a civil penalty not to exceed five thousand dollars (\$5,000) per violation or five hundred dollars (\$500) for each day of a continuing violation, whichever is greater. The method of recovery of said penalty shall be by a civil enforcement action in the district court in and for the county where the violation occurred. All civil penalties collected under this chapter shall be paid into the state scaling account.

(e) In addition to such civil penalties, any person or legal entity who has been determined to have violated the provisions of this chapter or any rule, order or license issued or promulgated pursuant to this chapter, shall be liable for any expense, including reasonable attorney’s fees, incurred by the state in enforcing this chapter.

(f) No action taken pursuant to the provisions of this chapter shall relieve any person or legal entity from any civil action and damages that may exist for damage resulting from any violation of this chapter or any rule, order or license issued or promulgated thereunder.

**History.**

I.C., § 38-1220A, as added by 1979, ch. 303,

§ 4, p. 822; am. 1986, ch. 243, § 1, p. 660; am. 2008, ch. 200, § 6, p. 648.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.  
State scaling account, § 38-1209.

out the section, substituted “this chapter” for “this act” and deleted “regulation” following “rule”; and in subsection (a), substituted “Idaho board of scaling practices” for “state board of scaling practices”.

**Amendments.**

The 2008 amendment, by ch. 200, through-

**38-1221. Commencement of civil enforcement actions — Criminal actions and penalties authorized — Duties of attorney general and prosecuting attorneys.** — (a) Upon request of the board or the chairman, it shall be the duty of the attorney general to institute and prosecute civil enforcement actions as provided in section 38-1220A, Idaho Code. In addition, when deemed by the chairman to be necessary, the chairman may retain private counsel to institute and prosecute civil enforcement actions as provided in section 38-1220A, Idaho Code.

(b) In addition to the above, any person who shall practice, or offer to practice log scaling in this state without being licensed, having a temporary permit or being an apprentice, in accordance with the provisions of this act or any rule, regulation, order or license issued or promulgated thereunder, or any person who shall attempt to use an expired or revoked certificate of registration or practice at any time during a period the board has suspended or revoked his certificate of registration, or any person who shall violate any of the provisions of this act or any rule, regulation, order or license issued or promulgated thereunder, shall be guilty of a misdemeanor, and shall, upon conviction, be sentenced to pay a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). A prosecution for a misdemeanor under this chapter must be commenced by the filing of the

complaint or the finding of an indictment within two (2) years after its commission.

The attorney general of this state or any assistant designated by him shall act as legal advisor of the board; and all criminal actions for violations of the provisions of this act shall be prosecuted by the prosecuting attorney of the county or counties in which the violations of the act may be committed.

#### History.

1969, ch. 91, § 22, p. 305; am. 1986, ch. 243, § 2, p. 660; am. 1993, ch. 91, § 1, p. 218.

### STATUTORY NOTES

#### Cross References.

Attorney general, § 67-1401 et seq.

91, which is compiled as §§ 38-1201 to 38-1220, 38-1221, and 38-1222.

#### Compiler's Notes.

The words "this act" refer to S.L. 1969, ch.

**38-1222. Appeal from checkscale to board — Appeal from board to court.** — Any scaler, seller, user, producer, buyer, or hauler of forest products aggrieved by any checkscaling report may appeal the report to the board. The board shall hear and determine such appeal as a contested case as provided in chapter 52, title 67, Idaho Code.

Any person aggrieved by any action of the board in denying, suspending, or revoking his license may appeal therefrom to the district court as provided in chapter 52, title 67, Idaho Code.

#### History.

1969, ch. 91, § 23, p. 305; am. 1970, ch. 185, § 6, p. 534; am. 1993, ch. 216, § 21, p. 587.

### STATUTORY NOTES

#### Compiler's Notes.

Section 24 of S.L. 1969, ch. 91 read: "The provisions of this act are hereby declared to be severable and if any provisions of this act or the application of such provision to any person or circumstance is declared invalid for

any reason, such declaration shall not affect the validity of remaining portions of this act."

#### Effective Dates.

Section 26 of S.L. 1969, ch. 91 declared an emergency. Approved March 7, 1969.

## CHAPTER 13

### FOREST PRACTICES ACT

#### SECTION.

38-1301. Short title.  
38-1302. Policy of the state — Purpose of act.  
38-1303. Definitions.  
38-1304. Duties of the board.  
38-1305. Duties, powers of department.  
38-1306. Notification of forest practice.  
38-1306A. Nonresident operators — Bond.  
38-1306B. Requirement for operating bonds.  
38-1307. Notice of violation — Cease and repair order — Stop work order — Enforcement proce-

#### SECTION.

dures — Remedies of the operator.  
38-1308. Repair of damage or correction of unsatisfactory condition resulting from violation of rules. [Repealed.]  
38-1309. Duty of purchaser.  
38-1310. Misdemeanor violations — Fines — Exemption.  
38-1311. Enforcement of act.  
38-1312. Conversion of forest land.



SECTION.

38-1313. Forest practices rehabilitation account.

38-1314. Forest practices which cannot fully

protect beneficial stream uses.  
[Repealed.]

**38-1301. Short title.** — This act shall be known and may be cited as “The Idaho Forest Practices Act.”

**History.**

1974, ch. 197, § 1, p. 1506.

**STATUTORY NOTES**

**Compiler’s Notes.**

The words “this act” refer to S.L. 1974, ch.

197, which is compiled as §§ 38-1301 to 38-1306 and 38-1309 to 38-1312.

**38-1302. Policy of the state — Purpose of act.** — (1) Recognizing that federal, state and private forest lands make a vital contribution to Idaho by providing jobs, products, tax base, and other social and economic benefits, by helping to maintain forest tree species, soil, air and water resources, and by providing a habitat for wildlife and aquatic life, it is the public policy of the state to encourage forest practices on these lands that maintain and enhance those benefits and resources for the people of the state of Idaho.

(2) To encourage uniform forest practices implementing the policy of this chapter, and to provide a mechanism for harmonizing and helping it implement and enforce laws and rules relating to federal, state and private forest land, it is the purpose of this chapter to vest in the board authority to adopt rules designed to assure the continuous growing and harvesting of forest tree species and to protect and maintain the forest soil, air, water resources, wildlife and aquatic habitat.

(3) No unit of local government shall enact any ordinance, rule or resolution which purports to regulate forest practices on the forest land in this state and which conflicts with any provision of this chapter.

**History.**

1974, ch. 197, § 2, p. 1506; am. 1991, ch.

244, § 1, p. 595; am. 1992, ch. 259, § 1, p. 752.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 1992, ch. 259 declared an emergency. Approved April 8, 1992.

**38-1303. Definitions.** — Unless the context requires otherwise, in this chapter:

(1) “Forest practice” means (a) the harvesting of forest tree species; (b) road construction associated with harvesting of forest tree species; (c) reforestation; (d) use of chemicals or fertilizers for the purpose of growing or managing forest tree species; (e) the management of slashings resulting from harvest, management or improvement of forest tree species; or (f) the

prompt salvage of dead or dying timber or timber that is threatened by insects, disease, windthrow, fire or extremes of weather.

(2) "Forest land" means federal, state and private land growing forest tree species which are, or could be at maturity, capable of furnishing raw material used in the manufacture of lumber or other forest products. The term includes federal, state and private land from which forest tree species have been removed but have not yet been restocked, but it does not include land affirmatively converted to uses other than the growing of forest tree species.

(3) "Operator" means a person who conducts or is required to conduct a forest practice.

(4) "Harvesting" means a commercial activity related to the cutting or removal of forest tree species to be used as a forest product. A commercial activity does not include the cutting or removal of forest tree species by a person for his own personal use.

(5) "Rules" means rules adopted by the board pursuant to section 38-1304, Idaho Code.

(6) "Landowner" means a person, partnership, corporation, or association of whatever nature that holds an ownership interest in forest land, including the state and federal government.

(7) "Timber owner" means a person, partnership, corporation, or association of whatever nature, other than the landowner, that holds an ownership interest in forest tree species on forest land.

(8) "Forest regions" means two (2) regions of forest land, one (1) region being north of the Salmon River and one (1) being south of the Salmon River.

(9) "Director" means the director of the Idaho department of lands.

(10) "Department" means the Idaho department of lands.

(11) "Board" means the Idaho board of land commissioners.

(12) "State" means the state of Idaho or any political subdivision thereof.

(13) "Forest practices advisory committee to the board" means that committee appointed by the director as provided in subsection (2)(a) of section 38-1305, Idaho Code.

(14) "Contract area" means the entire acreage which is subject to a single contract as specified in the notification of forest practices, pursuant to section 38-1306, Idaho Code.

(15) "Best management practice (BMP)" means a practice or combination of practices determined by the board, in consultation with the department and the forest practices advisory committee, to be the most effective and practicable means of preventing or reducing the amount of nonpoint pollution generated by forest practices.

(16) "Salvage" means the timely removal of dead and dying timber or timber that is threatened by insects, disease or such physical elements as fire, windthrow, or extremes of weather, and where the removal of such timber will help contain insect or disease outbreaks, aid in the prevention of wildfire, or, over the long term, help protect such resources and values as wildlife, water, soils or air quality.

(17) "Cumulative effects" means the impact on water quality and/or beneficial uses which result from the incremental impact of two (2) or more forest practices. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.

**History.**

1974, ch. 197, § 3, p. 1506; am. 1980, ch. 64, § 1, p. 129; am. 1989, ch. 154, § 2, p. 365; am.

1991, ch. 244, § 2, p. 595; am. 1991, ch. 245, § 1, p. 598; am. 1995, ch. 352, § 2, p. 1165.

**STATUTORY NOTES****Cross References.**

Director of department of lands, § 58-105.  
State board of land commissioners, Idaho Const., Art. IX, § 7 and § 58-101 et seq.

**Compiler's Notes.**

The letters "BMP" enclosed in parentheses so appeared in the law as enacted.

**38-1304. Duties of the board. — The board:**

(1) Shall adopt rules for forest regions establishing minimum standards for the conduct of forest practices on forest land. These rules shall be based upon the following criteria:

(a) Provide for the harvesting of forest tree species in a manner that will maintain the productivity of the forest land, minimize soil and debris entering streams and protect wildlife and fish habitat.

(b) Provide for road construction that will insure protection and maintenance of forest productivity, water quality and fish and wildlife habitat during construction and maintenance.

(c) Provide for reforestation that will maintain a continuous growing and harvesting of forest tree species by describing the conditions under which reforestation will be required, specifying the minimum number of trees per acre and the maximum period of time allowed after harvesting for establishment of forest tree species, and requiring stabilization of soils which have become exposed as a result of harvesting; however, an acreage exemption from reforestation may be established except that on such land exempted within one (1) year following harvesting, some form of vegetative cover shall be required sufficient to provide continuing soil productivity and stabilization.

(d) Provide for the use of chemicals or fertilizers in such a manner that the public health and aquatic and wildlife habitat will not be endangered from their handling, storage and application.

(e) Provide for management of slashings resulting from the harvesting, management or improvement of forest tree species in that manner necessary to protect reproduction and residual stands, to reduce risk from fire and insects and disease, to optimize the conditions for future regeneration of forest tree species, and to maintain air and water quality and fish and wildlife habitat.

(f) Provide for the timely salvage logging on all forest lands of dead or dying timber or timber that is threatened by various physical elements. Rules developed pursuant to this section shall consider both the economic value of the timber to be salvaged, the immediate costs of the salvage efforts, and the long-term costs to all forest resources and values associated with insect, disease or fire conditions which might otherwise be controlled by the salvage operations. The provisions of this subpart [paragraph] shall not apply to single contiguous forest ownerships less than two thousand (2,000) acres in size. Nothing in this paragraph shall be construed as requiring the removal of timber from private lands against the wishes of the private landowner.



**History.**

1974, ch. 197, § 4, p. 1506; am. 1991, ch. 245, § 2, p. 598.

**STATUTORY NOTES****Compiler's Notes.**

This section was enacted with a subsection (1), but no subsection (2).

The bracketed insertion in paragraph (1)(f) was added by the compiler to supply the probable intended term.

**38-1305. Duties, powers of department. — The department:**

(1) Shall administer and enforce this act;

(2)(a) Shall, through the director, appoint a forest practices advisory committee to the board for the purpose of providing technical advice to the board in carrying out the board's powers and duties as set forth in section 38-1304, Idaho Code. The forest practices advisory committee is composed of nine (9) members, three (3) residing in the north forest region and three (3) residing in the south forest region, and three (3) members shall be Idaho residents. All members of the committee shall be qualified by experience and/or training to provide technical advice related to forest practices. Of the three (3) members residing in each forest region, one (1) member shall be either a private landowner, a private timber owner, or authorized representative of the landowner or timber owner who regularly engages in forest practices; one (1) member shall be an operator; and one (1) member shall be a representative of the general public. Of the remaining three (3) members who are Idaho residents: one (1) member shall be qualified by training and experience as a fisheries biologist; one (1) member shall be a nonindustrial forest landowner; and one (1) member shall be an at-large member. Members of the forest practices advisory committee shall be appointed by the director for three (3) year terms. Appointments under this subsection shall be made by the director within sixty (60) days after the effective date of this section. If there is a vacancy, for any cause, the director shall make an appointment to become immediately effective for the unexpired term. Said appointee shall possess the same qualifications under this section as the person being replaced. The committee shall select a chairman from among its members. A member of the department of lands shall be designated by the director to serve as secretary, without voting power, for the committee.

(b) Notwithstanding the terms of the committee members specified by subsection (2)(a) of this section, of the members first appointed to each such committee:

- (i) Two (2) shall serve for a term of one (1) year;
- (ii) Two (2) shall serve for a term of two (2) years;
- (iii) Three (3) shall serve for a term of three (3) years.

(3) Shall advise and assist the board in the discharge of its duties as set forth in this act;

(4) Shall achieve coordination among state agencies which are concerned with the forest environment;

(5) Shall cooperate with and provide advice to landowners and timber owners in the management of forest lands;

(6) May enter into cooperative agreement or contracts which may be necessary in the administration of this act;

(7) All site-specific BMPs approved at the time of the effective date of this act shall remain in force and be enforced by the designated agency;

(8) Shall develop methods for controlling watershed impacts resulting from cumulative effects. The department shall form a cumulative effects watershed cooperative including, but not limited to, state and federal land managing agencies and owners of industrial private forest land, to serve as a clearinghouse for comparing and evaluating shared watershed information. The director shall select an interdisciplinary task force including appropriate technical specialists and affected landowners and shall, in consultation with the task force, formulate methods for controlling cumulative effects.

**History.**

1974, ch. 197, § 5, p. 1506; am. 1989, ch. 154, § 3, p. 365; am. 1991, ch. 244, § 3, p.

595; am. 1995, ch. 352, § 3, p. 1165; am. 2004, ch. 264, § 1, p. 743.

**STATUTORY NOTES**

**Compiler's Notes.**

The phrase "effective date of this section", in the seventh sentence in subdivision (2)(a), was in the original 1974 enactment of this section and, thus, refers to the effective date of S.L. 1974, ch. 197, which was July 1, 1975.

The phrase "effective date of this act" in subsection (7) refers to the effective date of S.L. 1995, ch. 352, which was July 1, 1995.

The words "this act" refer to S.L. 1974, ch. 197, which is compiled as §§ 38-1301 to 38-1306 and 38-1309 to 38-1312.

**38-1306. Notification of forest practice.** — (1) Before commencing a forest practice, the department shall be notified as required in subsection (2) of this section. The notice shall be given by the operator; however, the timber owner or landowner satisfies the responsibility of the operator under this subsection. When more than one (1) forest practice is to be conducted in relation to harvesting of forest tree species, one (1) notice including each forest practice to be conducted shall be filed with the department. A woodland management plan prepared by the woodland foresters of the department or approved by the board of supervisors of a soil conservation district shall constitute suitable notification of a forest practice when filed with the department, provided the woodland management plan contains the information required in subsection (2) of this section.

(2) The notification required in subsection (1) of this section shall be on forms prescribed and provided by the department and shall include the name and address of the operator, timber owner, and landowner, the legal description of the area in which the forest practice is to be conducted, and other information the department considers necessary for the administration of the rules adopted by the board under section 38-1304, Idaho Code.

(3) All notifications must be formally accepted by the department before any forest practice may begin.

(4) The initial purchaser of ties, logs, posts, cordwood, pulpwood and other similar forest products which have been cut from lands within the state of Idaho shall make no such purchase from anyone not having a proper acceptance of forest practice notice.

(5) Promptly upon formal acceptance of the notice, but not more than fifteen (15) days from formal acceptance of the notice, the department shall



mail a copy of the notice to whichever of the operator, timber owner, or landowner that did not submit the notification. The department shall make available to the operator, the timber owner, and landowner a copy of the rules.

(6) An operator, timber owner, or landowner, whichever filed the original notification, shall notify the department of any subsequent change in the information contained in the notification within thirty (30) days of the change. Promptly upon receipt of notice of change, but not to exceed fifteen (15) days from receipt of notice, the department shall mail a copy of the notice to whichever of the operator, timber owner, or landowner that did not submit the notice of change.

(7) The notification is valid for the same period as set forth in the certificate of compliance under section 38-122, Idaho Code. At the expiration of the notification, if the forest practice is continuing, the notification shall be renewed using the same procedures provided for in this section.

(8) If the notification required by subsection (1) of this section indicates that at the expiration of the notification that the forest practice will be continuing, the operator, timber owner, or landowner, at least thirty (30) days prior to the expiration of the notification, shall notify the department and obtain a renewal of the notification. Promptly upon receipt of the request for renewal, but not to exceed fifteen (15) days from receipt of the request, the department shall mail a copy of the renewed notification to whichever of the operator, timber owner, or landowner that did not submit the request for renewal.

(9) The department shall not accept a new forest practices notification from any operator having an outstanding notice of violation until the repairs specified pursuant to section 38-1307(2)(a), Idaho Code, have been completed to the satisfaction of the department.

#### History.

1974, ch. 197, § 6, p. 1506; am. 1986, ch. 241, § 1, p. 653; am. 1989, ch. 154, § 4, p. 365; am. 1990, ch. 125, § 1, p. 295; am. 1993,

ch. 216, § 22, p. 587; am. 1995, ch. 281, § 1, p. 941; am. 1995, ch. 352, § 4, p. 1165; am. 2007, ch. 90, § 18, p. 246.

### STATUTORY NOTES

#### Amendments.

This section was amended by two 1995 acts — ch. 281, § 1 and ch. 352, § 4, both effective July 1, 1995 — conflicts between these acts are explained below.

The 1995 amendment, by ch. 281, § 1, subdivided the former subsection (2) into subsections (2), (3), (3)(a) and (b), (4), (5), and (6); redesignated former subsections (3), (4), and (5) as (7), (8), and (9), respectively; and added subsection (10).

The 1995 amendment, by ch. 352, § 4, in subsection (2), following “forest practice is to be conducted,” deleted “whether the forest practice borders a stream segment of concern” and, following what is now subsection (3), deleted “If the forest practice will be conducted in an area bordering a stream segment of concern, this notice must be received by the

department no less than ten (10) business days before the commencement of the forest written agreement between the landowner and/or the operator and the department concerning implementation of the site specific BMPs which the department has determined are necessary to protect water quality in the affected stream segment of concern, the department shall not accept the notification until temporary rules have been enacted establishing the site-specific BMPs.” (which ch. 281 made subdivision (3) (b)), and “The director shall have the authority to adopt temporary rules pursuant to chapter 52, title 67, Idaho Code.” (which ch. 281 made subsection (4)).

The 2007 amendment, by ch. 90, redesignated former subsections (5) through (10) as (4) through (9).



**38-1306A. Nonresident operators — Bond.** — Prior to commencing any forest practices, nonresident operators who do not own real property in Idaho shall submit to the department a bond in a form acceptable to the board to insure the performance of the duties of the operator under this chapter and any rules and regulations promulgated hereunder, in the amount of two hundred dollars (\$200) per acre for each acre in the contract area, with a minimum bond of five thousand dollars (\$5,000) and a maximum bond of fifteen thousand dollars (\$15,000).

**History.**

I.C., § 38-1306A, as added by 1980, ch. 64,  
§ 2, p. 129.

**38-1306B. Requirement for operating bonds.** — (1) At the direction of the board, the department shall require submission of an operating bond, before accepting a forest practices notification, from any operator who has repeatedly or habitually:

- (a) Operated without a valid forest practices notification as required in section 38-1306, Idaho Code;
- (b) Violated the terms of a stop work order issued pursuant to section 38-1307(2)(b), Idaho Code;
- (c) Failed to apply best management practices as required by law and the rules promulgated under this chapter;
- (d) Willfully caused degradation to forest soils, air, or water resources; or
- (e) Failed to comply with the rules promulgated under this chapter as determined by the board.

(2) The bond shall be in a form, acceptable to the board, to insure the performance of the duties of the operator under this chapter and any rules promulgated thereunder, in the amount of two hundred dollars (\$200) per acre for each acre in the contract area included in a forest practices notification, with a minimum bond of five thousand dollars (\$5,000) and a maximum bond of fifteen thousand dollars (\$15,000).

(3) If the operator is a nonresident operator this bond shall be in addition to the nonresident bond required pursuant to section 38-1306A, Idaho Code.

**History.**

I.C., § 38-1306B, as added by 1995, ch. 281,  
§ 2, p. 941.

**38-1307. Notice of violation — Cease and repair order — Stop work order — Enforcement procedures — Remedies of the operator.**

— (1) When the department determines that an operator violated any provision of this chapter or rule, it shall issue a notice of violation. The notice shall specify the nature of the violation charged and any damage or unsatisfactory condition resulting from the violation.

(2) When a notice of violation is issued under this section, the department:

- (a) May issue an order directing the operator immediately to cease further violation and to commence and continue repairing the damage or correcting the unsatisfactory condition, hereinafter referred to as a “cease and repair order”.

(b) If after two (2) working days from the delivery of a cease and repair order, the operator fails to cease further violation and to commence and continue repairing the damage or to enter into an agreement to repair pursuant to subsection (2)(d) of this section, in compliance with the order, the department may issue and serve an order directing the operator to cease all forest practices within the contract area, hereinafter referred to as a "stop work order".

(c) The department may initiate the remedies set forth in subsection (2)(e) of this section:

1. At any time after delivery of the stop work order, if the operator fails to immediately stop work in the contract area;
2. After five (5) days from the delivery of the stop work order, if the operator fails to comply fully with the cease and repair order; or
3. At any time after delivery of a notice of violation, if serious or irreparable damage will occur to land as a result of said violation, notwithstanding any other provisions of this chapter.

(d) An operator who has been served with a cease and repair order and who has completed his work in and removed all of his equipment from the contract area, or who cannot enter upon the land to repair the damage because of heavy snow, flooding, or similar serious condition upon the land, may comply with the order by entering into an agreement with the department to commence and thereafter continue to repair the damage within sixty (60) days after repair is practicable following heavy snow, flooding or similar serious condition upon the land.

(e) The department shall initiate the following remedies in accordance with subsection (2)(c) of this section:

1. The department shall estimate the costs of repair of the damage and reasonable administrative and legal fees to be expended in obtaining a judgment against the operator, and shall notify the operator, timber owner and landowner in writing of the amount of the estimate.
2. The county attorney for the county where the contract area is situated or the attorney general shall file an action to enjoin the operator's violations and to recover the costs of repair and administrative and legal fees and/or to foreclose a lien against the operator as set forth in subsection (2)(e)3 of this section. Legal fees recovered in such an action shall accrue to the county attorney and the attorney general according to the proportionate time which each has expended in obtaining the judgment.
3. A priority lien shall attach to the real and personal property of the operator upon delivery of the stop work order for the amount not to exceed the estimated costs of repair and reasonable administrative and legal fees to be expended in foreclosing the lien. A written notice of the lien, containing a statement of the estimated costs of repair and reasonable administrative and legal fees, and the names of the parties against whom the lien attached, shall be certified under oath by the department and filed in the office of the county clerk and recorder of the county or counties where the real and personal property of the operator is located and where considered necessary to recover the estimated expenditures. This lien shall be perfected upon filing. This

lien shall cease unless legal action is instituted within one (1) year from the date of filing of the notice of the lien.

4. If the operator is a nonresident who does not own real property in Idaho, the department after hearing, may declare the operator's bond forfeited or commence legal action against the bond to recover the costs of repair and reasonable administrative and legal fees.

(3) An operator dissatisfied with a stop work order shall have thirty (30) days after service thereof to challenge the order, without administrative review thereof, in a court of proper jurisdiction in the county where the alleged damaged land is situated. In such an action the operator shall bear the burden of proving that the cease and repair order and the stop work order are without merit or basis; or shall have ten (10) days after service thereof to request a hearing before the board, to challenge the merit or basis of either or both orders. In such an action, the operator shall bear the burden of proving that the cease and repair order and the stop work order are without merit or basis. If the board affirms the order(s), the operator may within thirty (30) days after the board's decision, appeal the decision to the district court for the county where the alleged damaged land is situated. The action in the district court shall be limited to appellate review.

(4) If a nonresident operator who does not own real property in the state of Idaho performs forest practices without first submitting a bond in compliance with section 38-1306A, Idaho Code, or if an operator performs forest practices without first submitting notice to the department in compliance with section 38-1306, Idaho Code, the department may immediately commence legal action to enjoin the operator by temporary restraining order or preliminary injunction, and evoke through the county attorney the misdemeanor penalties of section 38-1310, Idaho Code. The testimony under oath of a department employee or forester that a nonresident operator who does not own property in Idaho is performing forest practices without a bond or that an operator is performing forest practices without having first given notice to the department shall constitute prima facie evidence upon which, if un rebutted, a district court shall issue a temporary restraining order or a preliminary injunction against the operator, to cease all forest practices in the contract area until this act has been fully complied with.

(5) Service of a notice or order under this section shall be made upon the operator or his agent, representative or contractor, by personal delivery or certified mail.

#### **History.**

I.C., § 38-1307, as added by 1980, ch. 64,  
§ 4, p. 129; am. 1986, ch. 241, § 2, p. 653.

### **STATUTORY NOTES**

#### **Cross References.**

Attorney general, § 67-1401 et seq.

#### **Prior Laws.**

Former § 38-1307, which comprised S.L. 1974, ch. 197, § 7, p. 1506, was repealed by S.L. 1980, ch. 64, § 3.

#### **Compiler's Notes.**

The letter "s" in parentheses in the fourth sentence of subsection (3) so appeared in the law as enacted.

The term "this act" in subsection (4) refers to S.L. 1980, ch. 64, which is codified as §§ 38-1303, 38-1306A, and this section. Prob-



ably, the reference should be to "this chapter", being chapter 13, title 38, Idaho Code.

**38-1308. Repair of damage or correction of unsatisfactory condition resulting from violation of rules. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised S.L. 1974,

ch. 197, § 8, p. 1506, was repealed by S.L. 1980, ch. 64, § 3.

**38-1309. Duty of purchaser.** — The initial purchaser of forest tree species which have been harvested from forest lands shall before making such purchase or contract to purchase, or accepting delivery of the same, must receive and keep on file a copy of the notice required by section 38-1306, Idaho Code, relating to the harvesting practice for which the forest tree species are being acquired by the initial purchaser. Such notice shall be available for inspection upon request by the department at all reasonable times.

**History.**

1974, ch. 197, § 9, p. 1506.

**38-1310. Misdemeanor violations — Fines — Exemption.** — (1) A violation of: subsections (1) through (4) of section 38-1306 or section 38-1312, Idaho Code, an order issued under subsection (2) of section 38-1307, Idaho Code, a rule adopted under section 38-1304, Idaho Code, or a material misrepresentation or false statements in the notice or notice of change required by section 38-1306 or section 38-1312, Idaho Code, is a misdemeanor. Each day's violation of an order issued under subsection (2) of section 38-1307, Idaho Code, is a separate offense. Each violation of section 38-1309, Idaho Code, is a separate offense.

(2) Fines collected under this act shall be deposited in the general account.

(3) Sections 38-1306 and 38-1307, Idaho Code, do not apply to forest practices performed by the department on forest land owned by the state of Idaho, but do apply to political subdivisions thereof.

**History.**

1974, ch. 197, § 10, p. 1506; am. 1988, ch. 211, § 1, p. 401.

**STATUTORY NOTES**

**Cross References.**

Penalty for misdemeanor where not otherwise provided, § 18-113.

**Compiler's Notes.**

The words "this act" refer to S.L. 1974, ch.

197, which is compiled as §§ 38-1301 to 38-1306 and 38-1309 to 38-1312.

**38-1311. Enforcement of act.** — The director may delegate to any

person within the department the powers and duties of peace officers to enforce this act.

**History.**

1974, ch. 197, § 11, p. 1506.

**STATUTORY NOTES****Compiler's Notes.**

The words "this act" refer to S.L. 1974, ch. 197, which is compiled as §§ 38-1301 to 38-1306 and 38-1309 to 38-1312.

As enacted, the section heading of this section read, "Power of peace officers to enforce provisions of any state forest law."

**38-1312. Conversion of forest land.** — (1) This act does not prevent the conversion of forest land to any other use. However, conversions shall require the filing of a notification as required in section 38-1306, Idaho Code, as well as compliance with the provisions of this chapter and rules and regulations promulgated pursuant thereto, except for provisions relating to reforestation. When forest land is converted to another use, vegetative cover sufficient to provide continuing soil productivity and stabilization shall be established within one (1) year of completion of the forest practice on disturbed areas larger than one (1) acre, except that the director may grant an extension of time if weather or other conditions interfere.

(2) The provisions of this section shall not apply to activities regulated under chapters 13 and 15, title 47, Idaho Code.

**History.**

1974, ch. 197, § 12, p. 1506; am. 1988, ch. 211, § 2, p. 401.

**STATUTORY NOTES****Compiler's Notes.**

The words "this act" refer to S.L. 1974, ch. 197, which is compiled as §§ 38-1301 to 38-1306 and 38-1309 to 38-1312.

Section 13 of S.L. 1974, ch. 197, read: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

**Effective Dates.**

Section 14 of S.L. 1974, ch. 197, reads: "(1) Except as provided in subsection (2) of this section, this act is effective on July 1, 1975.

"(2) The board and the department may take any action necessary prior to the effective date of this act, including hearings and adoption of rules and regulations required to effect the purposes of this act on July 1, 1975."

**38-1313. Forest practices rehabilitation account.** — There is hereby created in the dedicated fund in the state treasury a forest practices rehabilitation account, which shall be used by the department to rehabilitate forest lands damaged by a forest practice that is not repaired following the serving of a notice of violation. The department shall recover the costs of repairs and reasonable administrative and legal fees in accordance with subsection (2)(e) of section 38-1307, Idaho Code. Costs of repairs shall be deposited in the forest practices rehabilitation account.

**History.**

I.C., § 38-1313, as added by 1987, ch. 281,  
§ 1, p. 591.

**38-1314. Forest practices which cannot fully protect beneficial stream uses. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised I.C., § 38-1314, as added by 1989, ch. 154, § 5, p. 339,

was repealed by S.L. 1995, ch. 352, § 5, effective July 1, 1995.

**CHAPTER 14****RIGHT TO CONDUCT FOREST PRACTICES****SECTION.**

38-1401. Legislative findings and intent.

38-1402. Definitions.

38-1403. Forest practices not a nuisance —  
Exception.

**SECTION.**

38-1404. Local ordinances — Prior actions.

**38-1401. Legislative findings and intent.** — The legislature finds that forest practices conducted on forest land in urbanizing areas are often subjected to nuisance lawsuits, and that such suits encourage and even force the premature removal of the lands from forest uses and in some cases prohibit investments in forest improvements. It is the intent of the legislature to reduce the loss to the state of its forest resources by limiting the circumstances under which forest practices may be deemed to be a nuisance. The legislature also finds that the right to conduct forest practices is a natural right and is recognized as a permitted use in the state of Idaho.

**History.**

I.C., § 38-1401, as added by 1989, ch. 226,  
§ 1, p. 541.

**38-1402. Definitions.** — As used in this chapter:

(1) "Forest land" means state and private land growing forest tree species which are, or could be at maturity, capable of furnishing raw material used in the manufacture of lumber or other forest products. The term includes state and private land from which forest tree species have been removed but have not yet been restocked, but it does not include land affirmatively converted to uses other than the growing of forest tree species.

(2) "Forest practice" means:

(a) The harvesting of forest tree species;

(b) Road construction associated with harvesting of forest tree species;

(c) Reforestation;

(d) Use of chemicals or fertilizers for the purpose of growing or managing forest tree species; or

(e) The management of slashings resulting from harvest, management or improvement of forest tree species.

(3) "Improper or negligent operation" means that the forest practice is not



undertaken in conformity with federal, state and local laws and regulations, and adversely affects the public health and safety.

**History.**

I.C., § 38-1402, as added by 1989, ch. 226,  
§ 1, p. 541.

**38-1403. Forest practices not a nuisance — Exception.** — No forest practices conducted on forest land or an appurtenance to it shall be or become a nuisance, private or public, by any changed conditions in or about the surrounding nonforest activities after the same has been in operation for more than one (1) year when the forest practice was not a nuisance at the time the forest practice began; provided, that the provisions of this section shall not apply whenever a nuisance results from the improper or negligent operation of any forest practice conducted on any forest land or appurtenance to it.

**History.**

I.C., § 38-1403, as added by 1989, ch. 226,  
§ 1, p. 541.

**38-1404. Local ordinances — Prior actions.** — Any and all ordinances of any unit of local government now in effect or hereafter adopted that would make the operation of any forest practice conducted on forest land or an appurtenance to it a nuisance in the circumstances set forth in this chapter are and shall be null and void; provided, however, that the provisions of this section shall not apply whenever a nuisance results from the improper or negligent operation of any forest practice on forest land or an appurtenance to it. Provided further, that the provisions of this section shall not apply whenever a nuisance results from a forest practice on forest land located within the corporate limits of any city on July 1, 1989, nor shall the provisions of this chapter affect actions commenced prior to July 1, 1989.

**History.**

I.C., § 38-1404, as added by 1989, ch. 226,  
§ 1, p. 541.

## CHAPTER 15

### IDAHO FOREST PRODUCTS COMMISSION

**SECTION.**

38-1501. Declaration of policy.  
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38-1516. Penalties.

38-1517. Deposit and disbursement of funds.

## SECTION.

38-1518. Dissolution of the commission.

**38-1501. Declaration of policy.** — It is in the interest of all the people of Idaho that the abundant forest resources of the state be protected, and properly managed to produce multiple resources and values along with sustained yields of timber to support the economic welfare of the state. Because forest management, on both public and private lands, is important to each citizen of the state, it is the purpose by the enactment of this chapter to promote the economic and environmental welfare of the state by providing a means for the collection and dissemination of information regarding the management of the state's public and private forest lands and the forest products industry.

**History.**

I.C., § 38-1501, as added by 1992, ch. 163,  
§ 1, p. 518.

**38-1502. Definitions.** — As used in this chapter:

(1) "Assessment year" means January 1 through December 31 of any calendar year in which the commission levies an assessment.

(2) "Base year" means the calendar year immediately preceding the assessment year.

(3) "Business entity" means a person, firm, partnership, corporation, association, trust or other recognized legal entity.

(4) "Commission" means the Idaho forest products commission created by section 38-1503, Idaho Code.

(5) "Financial supporter" means entities who have paid assessments pursuant to this chapter.

(6) "Forest lands" means federal, state and private land growing forest tree species which are, or could be at maturity, capable of furnishing raw material used in the manufacture of lumber or other forest products. The term includes federal, state and private land from which forest tree species have been removed but have not yet been restocked, but it does not include land affirmatively converted to uses other than the growing of forest tree species.

(7) "Forest product manufacturer" means a business entity that engages in the processing, cutting, fabricating or other process which converts timber, chips, sawdust or shavings into lumber, paper, plywood, particle board or other usable products for sale in commerce, provided, however, as used in this chapter, forest products manufacturers shall not include the following business entities engaged in:

(a) The production of fence or corral posts or rails;

(b) Producing shingles or shakes;

(c) Producing firewood or pellets for energy; or

(d) Producing logs which have been shaped or scribed and used in the construction of log structures.

(8) "Hog fuel" means wood or wood scraps that have been shredded or pulverized and used by forest product manufacturers to generate energy.

(9) "Private forest lands" means forest lands not owned by the federal government, state government, an Indian tribe or a political subdivision of the state.

**History.**

I.C., § 38-1502, as added by 1992, ch. 163, § 1, p. 518; am. 1997, ch. 260, § 1, p. 742; am. 2003, ch. 101, § 1, p. 319.

**38-1503. Forest products commission created — Members. —**

(1) There is hereby created and established in the department of self-governing agencies the Idaho forest products commission, to be composed of five (5) voting members appointed by the governor from a list of names with at least two (2) names for each appointive office for each district submitted to the governor by the financial supporters of the commission in each district. Initial members of the commission shall serve either a three (3) or five (5) year term, with two (2) members of the commission serving three (3) year terms, and three (3) members of the commission serving five (5) year terms. For the initial commission members, the duration of each member's term shall be determined by lot. Thereafter, all commission members shall serve terms of three (3) years, and may be reappointed. The commission shall adopt rules to define the process for filling vacancies to the commission and to provide for determining the terms of office for all members of the commission after the expiration of the terms of the original members.

(2) The governor shall also name as permanent advisory members to the commission, the director of the department of lands, a representative of the United States forest service, the dean of the University of Idaho college of forestry, wildlife and range sciences [college of natural resources] or the dean's designee, and the executive directors of the intermountain forest industry association and the associated logging contractors. No advisory member of the commission shall have a vote on the commission.

**History.**

I.C., § 38-1503, as added by 1992, ch. 163, § 1, p. 518; am. 1995, ch. 255, § 1, p. 835.

**STATUTORY NOTES****Cross References.**

Department of self-governing agencies, § 67-2601 et seq.

Director of department of lands, § 58-105.

**Compiler's Notes.**

The bracketed insertion in subsection (2) was added by the compiler to reflect the

current college name at the University of Idaho.

For further information about the intermountain forest association, see <http://ifia.com>.

For further information about the associated logging contractors, inc., see <http://www.idahologgers.com>.

**38-1504. Qualifications of the member and composition of the commission. —** (1) Each member of the commission shall be nominated and appointed because of their knowledge of forest management, the forest products industry, or because they possess communications skills which would enhance the ability of the commission to carry out its duties. Members of the commission shall be residents of the state who derive a substantial part of their income from association with the forest products



industry within the state of Idaho. There shall be a total of five (5) members from the four (4) districts as follows:

District 1. The counties of Boundary, Bonner and Kootenai.

District 2. The counties of Shoshone, Benewah, Latah and Clearwater.

District 3. Idaho county and all counties north of the Salmon river not heretofore named.

District 4. Adams, Valley, Payette, Washington, Ada, Boise, Gem, and all other counties south of the Salmon river not heretofore named. From this district, the governor shall appoint two (2) members to the commission.

(2) The governor shall assure through his appointments to the commission that the commission membership reflects equitable representation from the timber growing, logging and transportation, and forest products manufacturing segments of the industry. The commission shall also include no less than one (1) member with demonstrated experience in communications or natural resource education.

**History.**

I.C., § 38-1504, as added by 1992, ch. 163,  
§ 1, p. 518.

**38-1505. Compensation of members.** — Members of the commission shall be compensated as provided in section 59-509(b), Idaho Code.

**History.**

I.C., § 38-1505, as added by 1992, ch. 163,  
§ 1, p. 518.

**38-1506. Chairman and staff of the commission.** — The commission shall elect a chairman and may employ clerical or other staff who are not members of the commission.

**History.**

I.C., § 38-1506, as added by 1992, ch. 163,  
§ 1, p. 518.

**38-1507. Meetings of the commission.** — The commission shall meet not less than four (4) times each year and at such other times as may be determined by either the chairman or a majority of the commission members. Any meeting may be held at any location within the state, and at any time.

**History.**

I.C., § 38-1507, as added by 1992, ch. 163,  
§ 1, p. 518; am. 1995, ch. 255, § 2, p. 835.

**38-1508. Duties and powers of the commission.** — (1) Consistent with the general purposes of this chapter, the commission shall establish the policies to be followed in the accomplishments of such purposes.

(2) In the administration of the provisions of this chapter, the commission shall, in conjunction and cooperation with other entities which represent the forest products industry, have the following duties, authorities and powers:

(a) Conduct research and surveys to determine public attitudes and

levels of knowledge regarding forest management and the forest products industry;

(b) Design educational campaigns and other needed efforts to provide the public with accurate information regarding the management of Idaho's forest lands and the forest products industry;

(c) Be an advocate for the proper management of Idaho's forest lands and for a healthy forest products industry in the state;

(d) Be a source of accurate and timely data regarding the forest resource and the forest products industry;

(e) Make projections regarding future timber supplies, availability of timber, new or existing products and markets, and other biological or social trends which might affect forest management or the forest products industry in Idaho; and

(f) Cooperate with any local, state or national organization or agency, whether voluntary or created by the law of any state or by national law, engaged in work or activities similar to the work and activities of the commission, and to enter into contracts and agreements with such organizations or agencies for carrying on a joint campaign of research, education and publicity.

(3) The commission shall also have the duty, power and authority:

(a) To take such actions as the commission deems necessary or advisable to stabilize and protect the forest products industry of the state and the health and welfare of the public;

(b) To sue and be sued;

(c) To enter into such contracts as may be necessary or advisable;

(d) To appoint and employ officers, agents and other personnel, including experts in publicizing forest management or the forest products industry, and to prescribe their duties and fix their compensation;

(e) To make use of such advertising means and methods as the commission deems advisable and to enter into contracts and agreements for research and advertising within the state;

(f) To lease, purchase or own the real or personal property deemed necessary in the administration of the provisions of this chapter;

(g) To prosecute in the name of the state of Idaho any suit or action for collection of any tax or assessment provided for in this chapter;

(h) To adopt, rescind, modify and amend all necessary and proper orders, resolutions and regulations for the procedure and exercise of its powers and the performance of its duties;

(i) To incur indebtedness and carry on all business activities; and

(j) To keep books and records and accounts of all its doings, which books, records, and accounts shall be open to inspection by the state controller and public at all times.

#### **History.**

I.C., § 38-1508, as added by 1992, ch. 163,  
§ 1, p. 518; am. 1994, ch. 180, § 69, p. 420.

## STATUTORY NOTES

**Cross References.**

State controller, § 67-1001 et seq.

**Effective Dates.**

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Con-

stitution of Idaho changing the names of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 69 of S.L. 1994, ch. 180 became effective January 2, 1995.

**38-1509. Limitations to the powers of the commission.** — Irrespective of such actions as may be taken by individual members of the commission, the commission itself shall not use any funds or other resources of the commission to influence the outcome of any election for public office, be it state or federal, or to influence the enactment or defeat of any specific piece of legislation; provided, however, the commission may, in the course of implementation of this chapter, generally and objectively inform the public of legislative or regulatory proposals which may affect the management of public or private forests in Idaho or the forest products industry.

**History.**

I.C., § 38-1509, as added by 1992, ch. 163, § 1, p. 518.

**38-1510. Commission accepting grants, donations and gifts.** — The commission may accept grants, donations and gifts of funds from any source for expenditure for any purpose consistent with this chapter which may be specified as a condition of any grant, donation or gift. All funds received under the provisions of this chapter shall be paid into a bank account in the name of the Idaho forest products commission and such moneys are hereby continuously appropriated and made available for defraying the expenses of the commission in carrying out the provisions of this chapter.

**History.**

I.C., § 38-1510, as added by 1992, ch. 163, § 1, p. 518.

**38-1511. Bonds of agents and employees.** — Any agent or employee appointed by the commission shall be bonded to the state of Idaho in the time, form, and manner as prescribed in chapter 8, title 59, Idaho Code. The cost of the bond is an administrative expense under this chapter.

**History.**

I.C., § 38-1511, as added by 1992, ch. 163, § 1, p. 518.

**38-1512. Appointment of staff, duties, salary.** — The commission may appoint clerical or other staff, on either a full or part time basis, who shall devote their time to the administration of the provisions of this chapter. The staff shall be paid reasonable salaries as fixed by the commission, commensurate with their duties and experience.



**History.**

I.C., § 38-1512, as added by 1992, ch. 163,  
§ 1, p. 518.

**38-1513. Establishment of the commission's office.** — For the convenience of the majority of those most likely to be affected by the administration of this act, the commission shall establish and maintain an office within the state of Idaho.

**History.**

I.C., § 38-1513, as added by 1992, ch. 163,  
§ 1, p. 518.

**STATUTORY NOTES****Compiler's Notes.**

The words "this act" refer to S.L. 1992, ch.

163, which is compiled as §§ 38-1501 to 38-1518.

**38-1514. State not liable for acts or omissions of the commission or of its employees.** — The state of Idaho is not liable for the acts or omissions of the commission or any member thereof or any officer, agent or employee thereof.

**History.**

I.C., § 38-1514, as added by 1992, ch. 163,  
§ 1, p. 518.

**38-1515. Imposition of assessments and provision for late fees.** — (1) From and after the first day of July, 1995, the commission is hereby authorized to levy the following assessments:

(a) For all forest products manufacturers, an amount no greater than fifty cents (50¢) per thousand board feet or the equivalent thereof for all logs either harvested in Idaho or measured or processed by a manufacturing entity located in the state of Idaho, regardless of the state in which the logs might have been cut. For purposes of this chapter, "forest products manufacturers" shall include those business entities which buy timber in Idaho and then sell it to other persons outside the state for manufacture into finished products. Such business entities shall be liable for the assessments described in this paragraph for all timber cut within Idaho and then distributed to other persons outside the state.

(b) For all business entities engaged in the harvest or transport of timber, logs, unfinished lumber, chips, sawdust, shavings or hog fuel in Idaho, a sum no greater than twenty-five dollars (\$25.00) per employee, including single, self-employers and the individuals involved in partnerships, as measured by the records of the department of employment [department of labor] during the month of July of the preceding year, or as provided in subsection (2) of this section, provided, however, those business entities engaged solely in the harvest or transport of those exclusions to forest products manufacturers as set forth in subsection (7)(a), (b), (c) and (d) of section 38-1502, Idaho Code, shall owe no duty or assessment under this chapter, nor shall any assessment be levied upon forest products transported by railroad.

(c) For business entities or persons owning more than fifty thousand (50,000) acres of private forest land within the state of Idaho but with no facilities for manufacturing forest products within the state, a sum no greater than sixteen and sixty-six one hundredths cents (16.66¢) per each acre of forest land, provided, however, that this assessment shall be reduced by an amount equal to the assessment described in paragraph (a) of this subsection for all logs harvested from that land in the preceding calendar year and assessed in this section. Persons owning less than a total of fifty thousand (50,000) acres of forest land in the state shall bear no assessment or fee pursuant to the provisions of this subsection.

(d) No firm or business entity shall be liable for assessments under this chapter in more than one (1) of the categories described in this section. In the event that a person, firm or business entity qualifies to pay more than one (1) assessment as described herein, then the greater of the assessments shall be assessed, due and payable.

(2) In collecting assessments due the commission, the commission is authorized to cooperate with and coordinate its actions to collect assessments with the various efforts of Idaho board of scaling practices, the tax commission, the department of employment [department of labor], the transportation department and the department of lands to either collect assessments or taxes due under the provisions of this chapter or to identify those who may owe assessments under the provisions of this chapter.

(3) Any person or firm who makes payment to the commission at a date later than that prescribed in rules set forth by the commission under this section may be subject to a late payment penalty as set forth by the commission by rule. Such penalty shall not exceed fifteen percent (15%) per annum on the amount due. In addition to the above penalty, the commission shall be entitled to recover all costs, fees, and reasonable attorney's fees incurred in the collection of the tax and penalty provided for in this section.

(4) An assessment levied under this chapter shall be based upon data compiled from the base year. Assessments shall be paid to the commission according to such rules as may be adopted by the commission.

**History.**

I.C., § 38-1515, as added by 1992, ch. 163,  
§ 1, p. 518; am. 1995, ch. 255, § 3, p. 835; am.

1997, ch. 260, § 2, p. 742; am. 2003, ch. 101,  
§ 2, p. 319.

**STATUTORY NOTES****Cross References.**

Department of land, § 58-101 et seq.  
Idaho board of scaling practices, § 38-1203.  
Tax commission, Idaho Const., Art. VII and  
§ 63-101 et seq.  
Transportation department, § 40-501 et  
seq.

in subdivision (1)(b) and subsection (2), was reorganized as the department of labor, which was subsequently reorganized as the department of commerce and labor, before being reorganized in 2007 as the department of labor. The bracketed insertions reflect the current name of the state agency.

**Compiler's Notes.**

The department of employment, referred to

**38-1516. Penalties.** — Any person who shall violate or aid in the violation of any of the provisions of this chapter shall be guilty of a

misdeemeanor and upon conviction thereof be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment not to exceed ninety (90) days or by both. Fines collected for violations shall be paid into the fund which accrues to administer the provisions of this chapter.

**History.**

I.C., § 38-1516, as added by 1992, ch. 163,  
§ 1, p. 518.

**38-1517. Deposit and disbursement of funds.** — (1) Immediately upon receipt, all moneys received by the commission shall be deposited in one (1) or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the commission when the amount of such payments exceeds two thousand dollars (\$2,000). Such designees may include the members of the staff of the commission.

(3) The right is reserved to the state of Idaho to audit the funds to the commission at any time.

(4) On or before January 15 of each year, the commission shall file with the senate and house committees responsible for natural resources, the legislative services office, the state controller, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission for the preceding year. The report shall also include an estimate of income of the commission for the current and next fiscal year and a projection of anticipated expenses by category for the current and next fiscal year. From and after January 15, 1994, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding year.

(5) All moneys received or expended by the commission shall be audited annually by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the director of legislative services. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code.

**History.**

I.C., § 38-1517, as added by 1992, ch. 163,  
§ 1, p. 518; am. 1993, ch. 327, § 19, p. 1186;

am. 1994, ch. 180, § 70, p. 420; am. 1996, ch. 159, § 16, p. 502; am. 2003, ch. 32, § 20, p. 115.

**STATUTORY NOTES**

**Cross References.**

Division of financial management, § 67-1910.

Legislative services office, § 67-701 et seq.

State controller, § 67-1001 et seq.

**Effective Dates.**

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and



after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the names of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general

election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 70 of S.L. 1994, ch. 180 became effective January 2, 1995.

**38-1518. Dissolution of the commission.** — (1) Subject to the conditions set forth in this section, the commission may be dissolved upon a vote, carried out by written ballot by all those who have paid assessments to the commission during the calendar year immediately preceding the vote. No such referendum may take place at any time prior to three (3) years from the date of enactment of this chapter. No such vote may be taken unless first approved by a majority of the commission who shall then report to those who have paid assessments to the commission for the reasons for the recommended dissolution together with any opposing views held by members of the commission, provided, however, that financial supporters who, together represent no less than fifty percent (50%) of the total assessments paid to the commission in the preceding year, or financial supporters who, together represent no less than ten percent (10%) of the total financial supporters for the preceding year may petition for a vote of dissolution without the approval of the commission. In no case, however, shall the commission be dissolved through a vote of the financial supporters unless the vote in favor of the dissolution exceeds sixty percent (60%) of the total assessments paid to the commission in the preceding year. One dollar (\$1.00) of assessment collected shall equal one (1) vote.

(2) Should such dissolution as described in this section occur, any unencumbered funds held by the commission shall be divided equally among private or public groups or agencies which, in the judgment of the commission, can best carry out the duties and authorities of the commission.

**History.**

I.C., § 38-1518, as added by 1992, ch. 163,  
§ 1, p. 518.

**STATUTORY NOTES**

**Compiler's Notes.**

The phrase "the date of enactment of this chapter" in the second sentence in subsection

(1) refers to the date of the enactment of S.L. 1992, ch. 163, which was effective July 1, 1992.

## CHAPTER 16

### INTERSTATE FOREST FIRE SUPPRESSION COMPACT

**SECTION.**

38-1601. Interstate inmate firefighter compact.

**38-1601. Interstate inmate firefighter compact.** — The "Interstate Inmate Firefighter Compact" is hereby enacted into law and entered into by

this state with any other states legally joining therein in the form substantially as follows:

## INTERSTATE FOREST FIRE SUPPRESSION COMPACT

### ARTICLE I — Purpose and Policy

The purpose of this compact is to provide for the development and execution of programs to facilitate the use of offenders in the forest fire suppression efforts of the party states for the ultimate protection of life, property and natural resources in the party states. The purpose of this compact is also, in emergent situations, to allow a sending state to cross state lines with an inmate when, due to weather or road conditions, it is necessary to cross state lines to facilitate the transport of an inmate.

### ARTICLE II — Definitions

As used in this compact, unless the context clearly requires otherwise:

(1) "Fire suppression unit" means a group of inmates selected by the sending states, corrections personnel, and any other persons deemed necessary for the transportation, supervision, care, security and discipline of inmates to be used in forest fire suppression efforts in the receiving state.

(2) "Forest fire" means any fire burning in any land designated by a party state or federal land management agencies as forest land.

(3) "Inmate" means a male or female offender who is under sentence to or confined in a prison or other correctional institution.

(4) "Institution" means any prison, reformatory, honor camp, or other correctional facility, except facilities for people with mental illness or intellectual disabilities, in which inmates may lawfully be confined.

(5) "Receiving state" means a state party to this compact to which a fire suppression unit is traveling.

(6) "Sending state" means a state party to this compact from which a fire suppression unit is traveling.

### ARTICLE III — Contracts

(1) Each party state may make one or more contracts with any one or more of the other party states for the assistance of one or more fire suppression units in forest fire suppression efforts. Any such contract shall provide, for matters as may be necessary and appropriate, to fix the obligations, responsibilities and rights of the sending and receiving state.

(2) The terms and provisions of this compact shall be part of any contract entered into by the authority of, or pursuant to, this compact. Nothing in any such contract may be inconsistent with this compact.

### ARTICLE IV — Procedures and Rights

(1) Each party state shall appoint a liaison for the coordination and deployment of the fire suppression units of each party state.

(2) Whenever the duly constituted judicial or administrative authorities in a state party to this compact, that has entered into a contract pursuant

to this compact, decides that the assistance of a fire suppression unit of a party state is required for forest fire suppression efforts, such authorities may request the assistance of one or more fire suppression units of any state party to this compact through an appointed liaison.

(3) Inmates who are members of a fire suppression unit shall at all times be subject to the jurisdiction of the sending state, and at all times shall be under the ultimate custody of corrections officers duly accredited by the sending state.

(4) The receiving state shall make adequate arrangements for the confinement of inmates who are members of a fire suppression unit of a sending state in the event corrections officers duly accredited by the sending state make a discretionary determination that an inmate requires institutional confinement.

(5) Cooperative efforts shall be made by corrections officers and personnel of the receiving state, located at a fire camp, with the corrections officers and other personnel of the sending state in the establishment and maintenance of fire suppression unit base camps.

(6) All inmates who are members of a fire suppression unit of a sending state shall be cared for and treated equally with such similar inmates of the receiving state, as may be members of a fire suppression unit of the receiving state.

(7) Further, in emergent situations, a sending state shall be granted authority and all the protections of any compact under this chapter to cross state lines with an inmate when, due to weather or road conditions, it is necessary to facilitate the transport of an inmate.

#### ARTICLE V — Acts Not Reviewable in Receiving State; Extradition

(1) If, while located within the territory of a receiving state, there occurs against the inmate within such state any criminal charge or if the inmate is suspected of committing, within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(2) An inmate member of a fire suppression unit of the sending state who is deemed to have escaped by a duly accredited corrections officer of a sending state shall be under the jurisdiction of both the sending state and the receiving state. Nothing contained in any compact shall be construed to prevent or affect the activities of officers and guards of any jurisdiction directed toward the apprehension and return of an escapee.

#### ARTICLE VI — Entry into Force

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by Idaho and any other state.

#### ARTICLE VII — Withdrawal and Termination

This compact shall continue in force and remain binding upon a party state until it has enacted a statute repealing the same and providing for the



sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states.

#### ARTICLE VIII — Other Arrangements Unaffected

Nothing contained in this compact may be construed to abrogate or impair any agreement or other agreement that a party state may have with a nonparty state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

#### ARTICLE IX — Construction and Severability

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of such compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

#### History.

I.C., § 38-1601, as added by 1993, ch. 80,  
§ 1, p. 208; am. 2010, ch. 235, § 21, p. 542.

#### STATUTORY NOTES

#### Amendments.

The 2010 amendment, by ch. 235, substituted “except facilities for people with mental

illness or intellectual abilities” for “except facilities for the mentally ill or mentally handicapped” in subsection (4) of Article II.



# TITLE 39

## HEALTH AND SAFETY

### CHAPTER.

1. ENVIRONMENTAL QUALITY — HEALTH, §§ 39-101 — 39-175C.
2. VITAL STATISTICS, §§ 39-201 — 39-278.
3. ALCOHOLISM AND INTOXICATION TREATMENT ACT, §§ 39-300 — 39-316.
4. PUBLIC HEALTH DISTRICTS, §§ 39-401 — 39-427.
5. AQUIFER PROTECTION DISTRICTS, §§ 39-501 — 39-508.
6. CONTROL OF VENEREAL DISEASES, §§ 39-601 — 39-610.
7. ADVERTISING CURES FOR SEXUAL DISORDERS. [REPEALED.]
8. CONTRACEPTIVES AND PROPHYLACTICS, §§ 39-801 — 39-810.
9. PREVENTION OF BLINDNESS AND OTHER PREVENTABLE DISEASES IN INFANTS, §§ 39-901 — 39-912.
10. PREVENTION OF CONGENITAL SYPHILIS, §§ 39-1001 — 39-1006.
11. BASIC DAY CARE LICENSE, §§ 39-1101 — 39-1120.
12. CHILD CARE LICENSING REFORM ACT, §§ 39-1201 — 39-1224.
13. HOSPITAL LICENSES AND INSPECTION, §§ 39-1301 — 39-1395.
14. HEALTH FACILITIES, §§ 39-1401 — 39-1460.
15. CARE OF BIOLOGICAL PRODUCTS, §§ 39-1501 — 39-1503.
16. FOOD ESTABLISHMENT ACT, §§ 39-1601 — 39-1613.
17. HEALTH REGULATIONS FOR EATING PLACES AND FOOD ESTABLISHMENTS — GRADING AND LICENSING. [RESERVED OR REPEALED.]
18. HOTELS AND FOOD VENDING ESTABLISHMENTS — REGULATIONS AND INSPECTION, §§ 39-1801 — 39-1834.
19. FIRE ESCAPES AND DOORS, §§ 39-1901 — 39-1905.
20. BARBER SHOPS, HAIRDRESSING ESTABLISHMENTS AND PUBLIC BATHING PLACES. [REPEALED.]
21. MARKING OF EXPLOSIVES, §§ 39-2101 — 39-2103.

### CHAPTER.

22. LIQUEFIED PETROLEUM GASES. [REPEALED.]
23. SMOKE MANAGEMENT. [REPEALED.]
24. HOME HEALTH AGENCIES, §§ 39-2401 — 39-2411.
25. SPEED, EQUIPMENT AND TRAFFIC REGULATIONS FOR BOATS AND WATERCRAFT. [REPEALED.]
26. FIREWORKS, §§ 39-2601 — 39-2630.
27. PLUMBING AND PLUMBERS. [AMENDED AND REDESIGNATED OR REPEALED.]
28. ABATEMENT DISTRICTS, §§ 39-2801 — 39-2814.
29. ENERGY EFFICIENT STATE BUILDINGS [EFFECTIVE UNTIL JULY 1, 2013], §§ 39-2901 — 39-2904.
30. RADIATION AND NUCLEAR MATERIAL, §§ 39-3001 — 39-3030.
31. REGIONAL MENTAL HEALTH SERVICES, §§ 39-3101 — 39-3139.
32. IDAHO COMMUNITY HEALTH CENTER GRANT PROGRAM, §§ 39-3201 — 39-3209.
33. IDAHO RESIDENTIAL CARE OR ASSISTED LIVING ACT, §§ 39-3301 — 39-3393.
34. REVISED UNIFORM ANATOMICAL GIFT ACT, §§ 39-3401 — 39-3425.
35. IDAHO CERTIFIED FAMILY HOMES, §§ 39-3501 — 39-3580.
36. WATER QUALITY, §§ 39-3601 — 39-3639.
37. ANATOMICAL TISSUE, ORGAN, FLUID DONATIONS, §§ 39-3701 — 39-3703.
38. MINORS — CONSENT TO TREATMENT, § 39-3801.
39. STERILIZATION, §§ 39-3901 — 39-3915.
40. MANUFACTURED HOMES — STANDARDS, §§ 39-4001 — 39-4011.
41. IDAHO BUILDING CODE ACT, §§ 39-4101 — 39-4131.
42. RECREATIONAL VEHICLES AND PARK TRAILERS, §§ 39-4201 — 39-4203.
43. MODULAR BUILDINGS, §§ 39-4301 — 39-4306.
44. HAZARDOUS WASTE MANAGEMENT, §§ 39-4401 — 39-4432.

## CHAPTER 1

### ENVIRONMENTAL QUALITY — HEALTH

### SECTION.

- 39-101. Short title.
- 39-102. State policy on environmental protection.

### SECTION.

- 39-102A. Legislative intent in creating department of environmental quality.



## SECTION.

- 39-103. Definitions.
- 39-104. Department of environmental quality — Creation.
- 39-104b. [Amended and redesignated.]
- 39-104c. Transfer of powers to administrator of department of environmental and community services. [Repealed.]
- 39-104A. Authority to make rules regulating large swine feeding operations — Financial assurances.
- 39-105. Powers and duties of the director.
- 39-106. Director — Additional powers and duties — Transfer and continuation of rules and other proceedings.
- 39-107. Board — Composition — Officers — Compensation — Powers — Subpoena — Depositions — Review — Rules.
- 39-107A. Real property in Bunker Hill cleanup site.
- 39-107B. Department of environmental quality fund.
- 39-107C. Environmental protection trust fund established.
- 39-107D. Rules of department or board.
- 39-108. Investigation — Inspection — Right of entry — Violation — Enforcement — Penalty — Injunctions.
- 39-109. Commencement of civil enforcement actions — Criminal actions authorized — Duties of attorney general.
- 39-110. Registration of persons engaged in operations or construction where air pollution is a factor — Reports.
- 39-111. Availability of records.
- 39-112. Emergency — Order — Hearing — Modification, affirmation, or setting aside.
- 39-113. Transfer of employees.
- 39-114. Open burning of crop residue.
- 39-115. Pollution source permits.
- 39-116. Compliance schedules.
- 39-116A. Compliance agreement schedules.
- 39-116B. Vehicle inspection and maintenance program.
- 39-117. Criminal violation — Penalty.
- 39-118. Review of plans.
- 39-118A. Ore processing by cyanidation.

## SECTION.

- 39-118B. Relationship to federal law.
- 39-118C. Legislative findings and declaration of purpose.
- 39-118D. Idaho air quality permitting fund.
- 39-118E. Small business assistance.
- 39-119. Collection of fees for services.
- 39-120. Department of environmental quality primary administrative agency — Agency responsibilities.
- 39-121. Definitions.
- 39-122, 39-123. [Repealed.]
- 39-124. Legislative findings — Intent. [Null and void.]
- 39-125. Moratorium on construction of certain coal fired power plants — Report. [Null and void.]
- 39-126. Duties of state and local units of government.
- 39-127. Application of fertilizers and pesticides.
- 39-128. Applicability — Promulgation of rules — Establishment of zones — Combustor charging composition and recordkeeping — Report to local government — Permit processing.
- 39-129. Applicability — Definition of local government and mandates — Authorization for local government agreements — Adoption of rules — Establishment of schedules — Priority of considerations — Report and recommendations.
- 39-130. Removal — Remediation — Bunker Hill mining and metallurgical complex superfund facility.
- 39-131 — 39-136. [Repealed.]
- 39-137 — 39-138. [Reserved.]
- 39-139 — 39-170. [Amended and redesignated.]
- 39-171. Legislative findings and purpose.
- 39-172. Definitions.
- 39-173. Committee — Members — Terms.
- 39-174. Committee duties — Meetings.
- 39-175. [Reserved.]
- 39-175A. Legislative findings and purposes.
- 39-175B. Relationship between state and federal law.
- 39-175C. Approval of state NPDES program.

**39-101. Short title.** — Sections 39-101 through 39-130, Idaho Code, may be known and cited as the “Idaho Environmental Protection and Health Act.”

**History.**

1972, ch. 347, § 1, p. 1017; am. 1986, ch. 60, § 1, p. 169.

STATUTORY NOTES

Cross References.

Administration and enforcement of use of breed name of cattle on label of milk and milk products act, §§ 37-339 to 37-343.

City and county hospitals, § 31-3701 et seq.

County environmental pollution control facilities, financing, § 31-4501 et seq.

Director, duties in prevention of infant diseases and blindness, § 39-906.

Educational institutions, Title 33, Idaho Code.

Food Establishment Act, § 39-1601 et seq.

Permit issued to seller of milk or milk products to use breed name of dairy cattle on label, § 37-340.

Probation officers providing services to counties, § 20-529.

Veterans' home, § 66-901 et seq.

Vital statistics, duty to enforce law governing, § 39-240 et seq.

Prior Laws.

Former sections 39-101 to 39-128, 39-130, which comprised S.L. 1967, ch. 311, §§ 1 to -26, p. 870; am. 1969, ch. 13, § 1, p. 18; am. 1969, ch. 16, § 1, p. 28; 1969, ch. 337, § 1, p. 1060; I.C., § 39-128, as added by 1970, ch. 18, § 1, p. 33; I.C., § 39-130, as added by 1971, ch. 42, § 1, p. 89; am. 1971, ch. 136, § 24, p. 522; I.C., § 39-112A, as added by 1971, ch. 365, § 1, p. 1361; 1972, ch. 44, § 4, were repealed by S.L. 1972, ch. 347, § 14, p. 1017.

JUDICIAL DECISIONS

ANALYSIS

Limitation on actions.

Nuisance claims.

Limitation on Actions.

Since this chapter does not provide its own statute of limitation, the four-year limitation provided by § 5-224 applies to actions brought under it. *Aetna Cas. & Sur. Co. v. Gulf Resources & Chem. Corp.*, 600 F. Supp. 797 (D. Idaho 1985).

Where a complaint of nuisance is permanent, the cause of action must be commenced within four years from the date the permanent nuisance was created or occurred; where the nuisance is temporary and continuing in nature, the statute of limitations does not run

and an action may be brought at any time to recover damages occurring within the previous limitation period. *Aetna Cas. & Sur. Co. v. Gulf Resources & Chem. Corp.*, 600 F. Supp. 797 (D. Idaho 1985).

Nuisance Claims.

This chapter does not preempt common law nuisance claims. *Idaho v. Bunker Hill Co.*, 635 F. Supp. 665 (D. Idaho 1986); *Idaho v. Hanna Mining Co.*, 699 F. Supp. 827 (D. Idaho 1987), *aff'd*, 882 F.2d 392 (9th Cir. 1989).

RESEARCH REFERENCES

**Am. Jur.** — 39 Am. Jur. 2d, Health, § 1 et seq.

**C.J.S.** — 39A C.J.S., Health and Environment, § 7 et seq.

**A.L.R.** — Power of court or other public agency to order medical treatment over parental religious objections for child whose life is not immediately endangered. 21 A.L.R.5th 248.

Power of court or other public agency to

order medical treatment for child over parental objections not based on religious grounds. 97 A.L.R.3d 421.

Amount and characteristics of wastes as equitable factors in allocation of response costs pursuant to § 113(f)(1) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C.A. § 9613(f)(1): multiple waste streams. 162 A.L.R. Fed. 371.

**39-102. State policy on environmental protection.** — 1. It is hereby recognized by the legislature that the protection of the environment and the promotion of personal health are vital concerns and are therefore of great importance to the future welfare of this state. It is therefore declared to be the policy of the state to provide for the protection of the environment and the promotion of personal health and to thereby protect and promote the health, safety and general welfare of the people of this state.

2. The goal of the legislature in enacting the ground water quality

protection act of 1989 shall be to maintain the existing high quality of the state's ground water and to satisfy existing and projected future beneficial uses including drinking water, agricultural, industrial and aquacultural water supplies. All ground water shall be protected as a valuable public resource against unreasonable contamination or deterioration. The quality of degraded ground water shall be restored where feasible and appropriate to support identified beneficial uses.

3. In enacting this law, the legislature intends to prevent contamination of ground water from point and nonpoint sources of contamination to the maximum extent practical. In attaining the goals enumerated in subsections 1 and 2 of this section, the legislature wishes to enumerate the following ground water quality protection goals:

- a. It is the policy of the state to prevent contamination of ground water from any source to the maximum extent practical.
- b. The discovery of any contamination that poses a threat to existing or projected future beneficial uses of ground water shall require appropriate actions to prevent further contamination. These actions may consist of investigation and evaluation or enforcement actions if necessary to stop further contamination or clean up existing contamination as required under the environmental protection and health act.
- c. All persons in the state should conduct their activities so as to prevent the nonregulated release of contaminants into ground water.
- d. Education of the citizens of the state is necessary to preserve and restore ground water quality.

#### **History.**

1972, ch. 347, § 2, p. 1017; am. 1989, ch. 421, § 1, p. 1027.

#### **STATUTORY NOTES**

##### **Prior Laws.**

Former § 39-102 was repealed. See Prior Laws, § 39-101.

##### **Compiler's Notes.**

The groundwater quality protection act of

1989, referred to in subsection 2, is the short title of S.L. 1989, ch. 421, which is codified as §§ 39-102, 39-120, 39-121, 39-126, 39-127, and 67-6537.

**39-102A. Legislative intent in creating department of environmental quality.** — The legislature finds and declares that:

(1) The creation and establishment of the department of environmental quality to protect human health and the environment as its sole mission is in the public's interest;

(2) That all existing, but no new rights, powers, duties, budgets, funds, contracts, rulemaking proceedings, administrative proceedings, contested cases, civil actions, and other matters relating to environmental protection as described in this chapter, vested in the director of the department of health and welfare and the board of health and welfare on January 1, 2000, shall be transferred to the board of environmental quality, the department of environmental quality and its director as described herein effective July 1, 2000;

(3) That protecting environmental values including, but not limited to,



clean air, water and soil, reducing or eliminating environmental pollution arising from human activities, ensuring the proper treatment, storage and disposal of hazardous wastes and ensuring the proper cleanup and restoration of existing natural resources are vital interests of the state of Idaho;

(4) That it is in the interest of the state and its citizens to establish a department of environmental quality to carry out programs to protect human health and the environment, to enforce environmental laws and develop pollution prevention, compliance assistance and other environmental incentive programs;

(5) That the goals to protect human health and the environment can be best achieved by vesting responsibility for environmental protection as specified herein in a state department which has as its sole mission, protection for human health and the environment for the state of Idaho and its residents;

(6) The legislature further intends that environmental quality programs be promulgated and managed such that the benefits of pollution control measures have a reasonable relationship to the public health costs, private property rights, environmental, economic and energy impacts of such measures, provided that this section does not require the preparation of any economic, environmental or other statement;

(7) That the department of environmental quality shall utilize the designated program appropriations made to the department of health and welfare for environmental program functions, the division of environmental quality and the INEEL oversight program for fiscal year 2001.

#### History.

I.C., § 39-102A, as added by 2000, ch. 132,  
§ 4, p. 309.

### STATUTORY NOTES

#### Effective Dates.

Section 39 of S.L. 2000, ch. 132 provides:  
“(1) This act shall be in full force and effect on and after July 1, 2000, except that the Division of Environmental Quality shall have one (1) year thereafter to accomplish necessary changes to complete the physical transition to the new department.

“(2) Notwithstanding any other provisions of Chapter 52, Title 67, Idaho Code, the Administrative Rules Coordinator shall redesign-

nate all references to the Division of Environmental Quality which appear in the master rule database maintained by the coordinator, to the Department of Environmental Quality without further republication or promulgation, to comply with the provisions of this act. Until such time as a republication of a rule occurs, any reference in a rule to the Division of Environmental Quality shall mean the Department of Environmental Quality.”

**39-103. Definitions.** — Whenever used or referred to in this chapter, unless a different meaning clearly appears from the context, the following terms shall have the following meanings:

(1) “Air contaminant” or “air contamination” means the presence in the outdoor atmosphere of any dust, fume, mist, smoke, radionuclide, vapor, gas or other gaseous fluid or particulate substance differing in composition from or exceeding in concentration the natural components of the atmosphere.

(2) “Air pollution” means the presence in the outdoor atmosphere of any contaminant or combination thereof in such quantity of such nature and duration and under such conditions as would be injurious to human health

or welfare, to animal or plant life, or to property, or to interfere unreasonably with the enjoyment of life or property.

(3) "Board" means the board of environmental quality.

(4) "Cyanidation" means the method of extracting target precious metals from ores by treatment with cyanide solution, which is the primary leaching agent for extraction.

(5) "Cyanidation facility" means that portion of a new ore processing facility, or a material modification or a material expansion of that portion of an existing ore processing facility that utilizes cyanidation and is intended to contain, treat, or dispose of cyanide containing materials including spent ore, tailings, and process water.

(6) "Department" means the department of environmental quality.

(7) "Director" means the director of the department of environmental quality or the director's designee.

(8) "Emission" means any controlled or uncontrolled release or discharge into the outdoor atmosphere of any air contaminant or combination thereof. Emission also includes any release or discharge of any air contaminant from a stack, vent or other means into the outdoor atmosphere that originates from an emission unit.

(9) "Laboratory" means not only facilities for biological, serological, biophysical, cytological and pathological tests, but also facilities for the chemical or other examination of materials from water or other substances.

(10) "Medical waste combustor" means any device, incinerator, furnace, boiler or burner, and any and all appurtenances thereto, which burns or pyrolyzes medical waste consisting of human or animal tissues, medical cultures, human blood or blood products, materials contaminated with human blood or tissues, used or unused surgical wastes, used or unused sharps, including hypodermic needles, suture needles, syringes and scalpel blades.

(11) "Person" means any individual, association, partnership, firm, joint stock company, trust, estate, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any other legal entity which is recognized by law as the subject of rights and duties.

(12) "Public water supply" or "public drinking water system" means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen (15) service connections, regardless of the number of water sources or configuration of the distribution system, or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes any collection, treatment, storage and distribution facilities that are under the control of the operator of such system and used primarily in connection with such system, and any collection or pretreatment storage facilities not under such control that are used primarily in connection with such system. Such term does not include any special irrigation district.

(13) "Solid waste" means garbage, refuse, radionuclides and other discarded solid materials, including solid waste materials resulting from industrial, commercial and agricultural operations and from community



activities but does not include solid or dissolved materials in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents, dissolved materials in irrigation return flows or other common water pollutants.

(14) "Solid waste disposal" means the collection, storage, treatment, utilization, processing or final disposal of solid waste.

(15) "State" means the state of Idaho.

(16) "Substantive" means that which creates, defines or regulates the rights of any person or implements, interprets or prescribes law or policy, but does not include statements concerning only the internal management of the department and not affecting private rights or procedures available to the public.

(17) "Water pollution" is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the state, or such discharge of any contaminant into the waters of the state as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare or to domestic, commercial, industrial, recreational, esthetic or other legitimate uses or to livestock, wild animals, birds, fish or other aquatic life.

(18) "Waters" means all accumulations of water, surface and underground, natural and artificial, public and private or parts thereof which are wholly or partially within, flow through or border upon this state except for private waters as defined in section 42-212, Idaho Code.

#### History.

I.C., § 39-103 as added by S.L. 1992, ch. 305, § 4, p. 911; am. 1993, ch. 267, § 1, p. 899;

am. 2000, ch. 132, § 5, p. 309; am. 2005, ch. 167, § 1, p. 509; am. 2010, ch. 23, § 1, p. 41.

### STATUTORY NOTES

#### Prior Laws.

Former § 39-103, which comprised 1972, ch. 347, § 3, p. 1017; am. 1973, ch. 143, § 1, p. 279; am. 1974, ch. 23, § 47, p. 633; am. 1978, ch. 45, § 1, p. 80; am. 1989, ch. 308, § 2, p. 762; am. 1990, ch. 357, § 1, p. 965; am. 1992, ch. 305, § 1, was repealed by S.L. 1992, ch. 305, § 3, effective March 1, 1993.

Another former § 39-103 was repealed. See Prior Laws, § 39-101.

#### Amendments.

The 2010 amendment, by ch. 23, rewrote subsection (12) which formerly read: "Public water supply' means all mains, pipes and structures through which water is obtained and distributed to the public, including wells and well structures, intakes and cribs, pumping stations, treatment plants, reservoirs, storage tanks and appurtenances, collectively or severally, actually used or intended for use for the purpose of furnishing water for drinking or general domestic use in incorporated municipalities, or unincorporated communities where ten (10) or more separate premises or households are being served or intended to be served; or any other supply which serves

water to the public and which the department declares to have potential health significance".

#### Compiler's Notes.

Section 5 of S.L. 1992, ch. 305 read: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

Section 2 of S.L. 1993, ch. 267 read: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

Section 2 of S.L. 1992, ch. 305 which provided for the promulgation of emergency and permanent rules and regulations to amend the Idaho Department of Health and Welfare Rules and Regulations, Title 1, Chapter 1, Rules and Regulations for the Control of Air Pollution, consistent with that act became effective April 8, 1992 and subsequently be-



came null and void and of no force and effect on March 1, 1993 as provided in § 6 of S.L. 1992, ch. 305.

**Effective Dates.**

Section 6 of S.L. 1992, ch. 305 read: "An emergency existing therefor, which emergency is hereby declared to exist. Sections 1, 2, and 5 of this act shall be in full force and effect on and after passage and approval. Sections 1 and 2 of this act shall be null, void and of no force and effect on and after March 1, 1993. Sections 3 and 4 of this act shall be in full force and effect on and after March 1, 1993."

Section 3 of S.L. 1993, ch. 267 read: "An emergency existing therefor, which emergency is hereby declared to exist, all sections of this act shall be in full force and effect upon approval and retroactively to March 1, 1993."

Section 39 of S.L. 2000, ch. 132 provides: "(1) This act shall be in full force and effect on and after July 1, 2000, except that the Division of Environmental Quality shall have one (1) year thereafter to accomplish necessary changes to complete the physical transition to the new department.

"(2) Notwithstanding any other provisions of Chapter 52, Title 67, Idaho Code, the Administrative Rules Coordinator shall redesignate all references to the Division of Environmental Quality which appear in the master rule database maintained by the coordinator, to the Department of Environmental Quality without further republication or promulgation, to comply with the provisions of this act. Until such time as a republication of a rule occurs, any reference in a rule to the Division of Environmental Quality shall mean the Department of Environmental Quality."

**39-104. Department of environmental quality — Creation. —**

(1) There is created and established in the state government a department of environmental quality which shall for the purposes of section 20, article IV, of the constitution of the state of Idaho be an executive department of the state government. The executive and administrative power of this department shall be vested in the director of the department who shall be appointed and serve at the pleasure of the governor, with the advice and consent of the senate.

(2) The department shall be organized in such administrative divisions or regions as may be necessary in order to efficiently administer the department. Each division shall be headed by an administrator who shall be appointed by and serve at the pleasure of the director.

(3) The INL coordinator, deputy director, regional administrators and division administrators shall be nonclassified employees exempt from the provisions of chapter 53, title 67, Idaho Code.

(4) No provision of this title shall be interpreted as to supersede, abrogate, injure or create rights to divert or store water and apply water to beneficial uses established under section 3, article XV of the constitution of the state of Idaho and title 42, Idaho Code. Nothing in this title shall be construed to allow the department to establish a water right for minimum stream flows or a water right for minimum water levels in any lakes, reservoirs or impoundments. Minimum stream flows and minimum water levels may only be established pursuant to chapter 15, title 42, Idaho Code.

(5) Nothing in this title shall be construed to allow the department to establish or require minimum stream flows which would prevent any water from being diverted for irrigation purposes pursuant to existing water rights, or to establish or require minimum water levels in any lakes, reservoirs or impoundments in which any water is stored for irrigation purposes which would adversely affect existing water rights or contracts with the federal government.

**History.**

1973, ch. 87, § 3, p. 137; I.C., § 39-104b, as am. and redesi. to § 39-104 by 1974, ch. 23,

§ 48, p. 633; am. 1995, ch. 365, § 1, p. 1276; am. 2000, ch. 132, § 6, p. 309; am. 2007, ch. 83, § 1, p. 221.

## STATUTORY NOTES

**Prior Laws.**

Former § 39-104, which comprised S.L. 1972, ch. 347, § 4, p. 1017, was repealed by S.L. 1974, ch. 23, § 1.

Another former § 39-104 was repealed. See Prior Laws, § 39-101.

**Amendments.**

The 2007 amendment, by ch. 83, in subsection (3), substituted “INL coordinator” for “INEEL coordinator-manager” and inserted “deputy director.”

**Effective Dates.**

Section 39 of S.L. 2000, ch. 132 provides: “(1) This act shall be in full force and effect on and after July 1, 2000, except that the Division of Environmental Quality shall have one

(1) year thereafter to accomplish necessary changes to complete the physical transition to the new department.

“(2) Notwithstanding any other provisions of Chapter 52, Title 67, Idaho Code, the Administrative Rules Coordinator shall redesignate all references to the Division of Environmental Quality which appear in the master rule database maintained by the coordinator, to the Department of Environmental Quality without further republication or promulgation, to comply with the provisions of this act. Until such time as a republication of a rule occurs, any reference in a rule to the Division of Environmental Quality shall mean the Department of Environmental Quality.”

**39-104b. [Amended and redesignated.]**

## STATUTORY NOTES

**Compiler's Notes.**

Former § 39-104b was amended and redesignated as § 39-104 by S.L. 1974, ch. 23, § 48, effective July 1, 1974.

**39-104c. Transfer of powers to administrator of department of environmental and community services. [Repealed.]**

## STATUTORY NOTES

**Compiler's Notes.**

This section, which comprised S.L. 1973, ch. 87, § 4, p. 137, was repealed by S.L. 1974, ch. 23, § 1, effective July 1, 1974.

**39-104A. Authority to make rules regulating large swine feeding operations — Financial assurances.** — (1) The state of Idaho is experiencing the development of large swine feeding operations which are inadequately controlled through existing state regulatory mechanisms. If not properly regulated, these facilities pose a threat to the state's surface and ground water resources. Due to existing rulemaking authority, the department of environmental quality is in the best position of all state agencies to modify its present rules and to make new rules to develop an adequate regulatory framework for large swine feeding operations.

(2) The department of environmental quality is authorized to modify its existing administrative rules and to make new rules regulating large swine feeding operations, as they shall be defined by the department. The department is authorized to work with the Idaho department of agriculture in the development of such rules.

(3) Owners and operators of swine facilities required to obtain a permit from the department of environmental quality to construct, operate, expand or close the facilities shall provide financial assurances demonstrating financial capability to meet requirements for operation and closure of the facilities and remediation. Requirements for financial assurances shall be determined by the agency as set forth in rule. Financial assurances may



include any mechanism or combination of mechanisms meeting the requirements established by agency rule including, but not limited to, surety bonds, trust funds, irrevocable letters of credit, insurance and corporate guarantees. The mechanism(s) used to demonstrate financial capability must be legally valid, binding and enforceable under applicable law and must ensure that the funds necessary to meet the costs of closure and remediation will be available whenever the funds are needed. The director may retain financial assurances for up to five (5) years after closure of a facility to ensure proper closure and remediation, as defined by rule.

(4) Those swine facilities described in section 39-7905, Idaho Code, shall meet the requirements of section 39-7907, Idaho Code, in addition to the requirements of this chapter and the department of environmental quality's rules regulating swine facilities, prior to the issuance of a final permit by the director. The director shall require that swine facilities be constructed in a phased manner over a period of time and that no additional facilities be constructed until the director approves the associated waste treatment system.

(5) Nothing in this section prohibits the boards of county commissioners of any county or the governing body of any city from adopting regulations that are more stringent or that require greater financial assurances than those imposed by the department of environmental quality. A board of county commissioners of a county or a governing body of a city in which a swine facility is located may choose to determine whether the facility is properly closed according to imposed standards or may leave that determination to the department. This choice shall be communicated to the director in writing when closure begins; provided that determinations of closure by a board of county commissioners of a county or a governing body of a city in which the swine facility is located shall not permit closure under less stringent requirements than those imposed by the department.

(6) As used in this section:

(a) "Animal unit" means a unit equaling two and one-half (2.5) swine, each weighing over twenty-five (25) kilograms (approximately fifty-five (55) pounds), or ten (10) weaned swine, each weighing under twenty-five (25) kilograms. Total animal units are calculated by adding the number of swine weighing over twenty-five (25) kilograms multiplied by four-tenths (.4) plus the number of weaned swine weighing under twenty-five (25) kilograms multiplied by one-tenth (.1).

(b) "Facilities" or "facility" means a place, site or location or part thereof where swine are kept, handled, housed or otherwise maintained and includes, but is not limited to, buildings, lots, pens and animal waste management systems, and which has a one-time animal unit capacity of two thousand (2,000) or more animal units.

(c) "Large swine feeding operations" means swine facilities having a one-time animal unit capacity of two thousand (2,000) or more animal units.

(d) "One-time animal unit capacity" means the maximum number of animal units that a facility is capable of housing at any given time.



**History.**

I.C., § 39-104A, as added by 1999, ch. 263, § 1, p. 669; am. 2000, ch. 132, § 7, p. 309; am.

2000, ch. 221, § 1, p. 614; am. 2001, ch. 103, § 14, p. 253; am. 2001, ch. 350, § 1, p. 1228; am. 2011, ch. 227, § 3, p. 615.

**STATUTORY NOTES****Cross References.**

Department of agriculture, § 22-101 et seq.

**Prior Laws.**

Former § 39-104A, which comprised S.L. 1973, ch. 87, § 2, was repealed by S.L. 1974, ch. 23, § 1.

**Amendments.**

This section was amended by two 2000 acts which appear to be compatible and have been compiled together.

The 2000 amendment, by ch. 132, § 7, effective July 1, 2000, near the middle of the last sentence in subsection (1), deleted “of health and welfare, division” preceding “of environmental quality”; and near the beginning of the first sentence in subsection (2), substituted “environmental quality” for “health and welfare”.

The 2000 amendment, by ch. 221, § 1, effective April 12, 2000, added “Financial Assurances” to the catchline; near the beginning of the second sentence in subsection (1), deleted “department of health and welfare,” preceding “division of environmental quality,” deleted the comma preceding “is in the best position”; near the beginning of the first sentence in subsection (2), substituted “division of environmental quality” for “department of health and welfare”, at the end of the sentence, substituted “division” for “department”, at the beginning of the last sentence, substituted “division” for “department”; and added subsections (3) through (5).

This section was amended by two 2001 acts which appear to be compatible and have been compiled together.

The 2001 amendment, by ch. 103 § 14, substituted “department” for “division” throughout the section.

The 2001 amendment, by ch. 350, § 1, substituted “department” for “division” throughout the section; added subsections (4) and (5); and redesignated former subsection (5) as present subsection (6).

The 2011 amendment, by ch. 227, in the section heading and throughout the text, de-

leted “and poultry” following “swine”; deleted the former last sentence in subsection (4), which read: “The director may require that poultry facilities be constructed in a phased manner over a period of time and that no additional facilities be constructed until the director approves the associated waste treatment system”; in paragraph (6)(a), deleted “or one hundred (100) poultry” from the end of the first sentence and deleted “plus the number of poultry multiplied by one one-hundredth (.01)” from the end of the last sentence; and, in paragraph (6)(c), deleted “and poultry facilities” following “swine facilities.”

**Compiler’s Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

**Effective Dates.**

Section 2 of S.L. 1999, ch. 263 declared an emergency. Approved March 24, 1999.

Section 39 of S.L. 2000, ch. 132 provides: “(1) This act shall be in full force and effect on and after July 1, 2000, except that the Division of Environmental Quality shall have one (1) year thereafter to accomplish necessary changes to complete the physical transition to the new department.

“(2) Notwithstanding any other provisions of Chapter 52, Title 67, Idaho Code, the Administrative Rules Coordinator shall redesignate all references to the Division of Environmental Quality which appear in the master rule database maintained by the coordinator, to the Department of Environmental Quality without further republication or promulgation, to comply with the provisions of this act. Until such time as a republication of a rule occurs, any reference in a rule to the Division of Environmental Quality shall mean the Department of Environmental Quality.”

Section 2 of S.L. 2000, ch. 221 declared an emergency. Approved April 12, 2000.

Section 3 of S.L. 2001, ch. 350 declared an emergency. Approved April 9, 2001.

Section 4 of S.L. 2011, ch. 227 declared an emergency. Approved April 6, 2011.

**39-105. Powers and duties of the director.** — The director shall have the following powers and duties:

(1) All of the rights, powers and duties regarding environmental protection functions vested in the department of health and welfare, and its director, administered by the division of environmental quality, including, but not limited to, those provided by chapters 1, 4, 30, 36, 44, 58, 62, 64, 65, 66, 70, 71, 72 and 74, title 39, Idaho Code. The director shall have all such

powers and duties as described in this section as may have been or could have been exercised by his predecessors in law, and shall be the successor in law to all contractual obligations entered into by predecessors in law. All hearings of the director shall be governed by the provisions of chapter 52, title 67, Idaho Code.

(2) The director shall, pursuant and subject to the provisions of the Idaho Code, and the provisions of this act, formulate and recommend to the board, rules as may be necessary to deal with problems related to water pollution, air pollution, solid waste disposal, and licensure and certification requirements pertinent thereto, which shall, upon adoption by the board, have the force of the law relating to any purpose which may be necessary and feasible for enforcing the provisions of this act, including, but not limited to, the prevention, control or abatement of environmental pollution or degradation including radionuclides and risks to public health related to any of the powers and duties described in this section. Any such rule may be of general application throughout the state or may be limited as to times, places, circumstances or conditions in order to make due allowance for variations therein.

(3) The director, under the rules adopted by the board, shall have the general supervision of the promotion and protection of the environment of this state. The powers and duties of the director shall include, but not be limited to, the following:

(a) The issuance of licenses and permits as prescribed by law and by the rules of the board promulgated hereunder. For each air quality operating permit issued under title V of the federal clean air act and its implementing regulations, the director shall, consistent with the federal clean air act and its implementing regulations, expressly include a provision stating that compliance with the conditions of the permit shall be deemed compliance with the applicable requirements of the federal clean air act and the title V implementing regulations. The director may develop and issue general permits covering numerous similar sources, as authorized by 40 CFR 70.6(d) as may be amended, and as appropriate.

(b) The enforcement of rules relating to public water supplies and to administer the drinking water loan fund pursuant to chapter 76, title 39, Idaho Code, including making loans to eligible public drinking water systems as defined in the federal safe drinking water act as amended, and to comply with all requirements of the act, 42 U.S.C. 300f, et seq. and regulations promulgated pursuant to the act. This includes, but is not limited to, the development of and implementation of a capacity development strategy to ensure public drinking water systems have the technical, managerial and financial capability to comply with the national primary drinking water regulations; and the enhancement of protection of source waters for public drinking water systems.

(c) The establishment of liaison with other governmental departments, agencies and boards in order to effectively assist other governmental entities with the planning for the control of or abatement of environmental pollution. All of the rules adopted by the board hereunder shall apply to state institutions.

(d) The supervision and administration of a system to safeguard air quality and for limiting and controlling the emission of air contaminants.



(e) The supervision and administration of a system to safeguard the quality of the waters of this state including, but not limited to, the enforcement of rules relating to the discharge of effluent into the waters of this state and the storage, handling and transportation of solids, liquids, and gases which may cause or contribute to water pollution. For purposes of complying with the clean water act, the director may provide an exemption from additional reductions for those nonpoint sources that meet the applicable reductions set forth in an approved TMDL as defined in chapter 36, title 39, Idaho Code.

(f) The supervision and administration of administrative units whose responsibility shall be to assist and encourage counties, cities, other governmental units, and industries in the control of and/or abatement of environmental pollution.

(g) The administration of solid waste disposal site and design review in accordance with the provisions of chapter 74, title 39, Idaho Code, and chapter 4, title 39, Idaho Code, and in particular as follows:

(i) The issuance of a solid waste disposal site certificate in the manner provided in chapter 74, title 39, Idaho Code.

(ii) Provide review and approval regarding the design of solid waste disposal facilities and ground water monitoring systems and approval of all applications for flexible standards as provided in 40 CFR 258, in accordance with the provisions of chapter 74, title 39, Idaho Code.

(iii) Cooperating and coordinating with operational monitoring of solid waste disposal sites by district health departments pursuant to authority established in chapters 4 and 74, title 39, Idaho Code.

(iv) The authority granted to the director pursuant to provisions of this subsection shall be effective upon enactment of chapter 74, title 39, Idaho Code, by the legislature.

(v) The authority to develop and propose rules as necessary to supplement details of compliance with the solid waste facilities act and applicable federal regulations, provided that such regulations shall not conflict with the provisions of this act nor shall such regulations be more strict than the requirements established in federal law or in the solid waste facilities act.

(h) The establishment, administration and operation of:

(i) A network of environmental monitoring stations, independent of the United States department of energy, within and around the facilities of the Idaho national laboratory to provide authoritative auditing and analysis of emissions, discharges or releases of pollutants to the environment, including the air, water and soil from such facilities; and

(ii) Programs within the department to utilize the data obtained from such monitoring, and any other relevant data, in the enforcement of applicable agreements, statutes and rules pertaining to such facilities and programs to review, analyze and participate in remedial decisions and other proposed actions and projects to ensure the protection of public health and the environment.

The director shall also monitor the implementation of agreements between the United States and the state of Idaho related to the operation and environmental protection obligations of the Idaho national laboratory



and provide periodic information to the governor, the attorney general, the legislature and the people of Idaho concerning compliance with such agreements and obligations. The director shall have the power to enter into agreements with the United States department of energy in order to carry out the duties and authorities provided in this subsection.

(i) The enforcement of all laws, rules, regulations, codes and standards relating to environmental protection and health.

(j) The enhancement and protection of source waters of the state pursuant to rules of the board.

(4) The director, when so designated by the governor, shall have the power to apply for, receive on behalf of the state, and utilize any federal aid, grants, gifts, gratuities, or moneys made available through the federal government including, but not limited to, the federal water pollution control act, for use in or by the state of Idaho in relation to health and environmental protection.

(5) The director shall have the power to enter into and make contracts and agreements with any public agencies or municipal corporation for facilities, land, and equipment when such use will have a beneficial or recreational effect or be in the best interest in carrying out the duties imposed upon the department.

The director shall also have the power to enter into contracts for the expenditure of state matching funds for local purposes. This subsection will constitute the authority for public agencies or municipal corporations to enter into such contracts and expend money for the purposes delineated in such contracts.

(6) The director is authorized to adopt an official seal to be used on appropriate occasions, in connection with the functions of the department or the board, and such seal shall be judicially noticed. Copies of any books, records, papers and other documents in the department shall be admitted in evidence equally with the originals thereof when authenticated under such seal.

#### **History.**

1972, ch. 347, § 5, p. 1017; am. 1974, ch. 23, § 49, p. 633; am. 1980, ch. 325, § 1, p. 820; am. 1988, ch. 47, § 2, p. 54; am. 1989, ch. 308, § 3, p. 762; am. 1991, ch. 332, § 2, p. 859; am. 1992, ch. 307, § 1, p. 915; am. 1992, ch. 331,

§ 2, p. 972; am. 1993, ch. 139, § 22, p. 342; am. 1993, ch. 275, § 4, p. 926; am. 1994, ch. 75, § 1, p. 156; am. 1997, ch. 26, § 1, p. 36; am. 1999, ch. 174, § 1, p. 467; am. 2000, ch. 132, § 8, p. 309; am. 2004, ch. 335, § 2, p. 995; am. 2007, ch. 83, § 2, p. 221.

### **STATUTORY NOTES**

#### **Cross References.**

Attorney general, § 67-1401 et seq.

Drinking water and wastewater professionals, licensing of, § 54-2401 et seq.

Solid waste facilities act, § 39-7401 et seq.

#### **Prior Laws.**

Former § 39-105 was repealed. See Prior Laws, § 39-101.

#### **Amendments.**

The 2007 amendment, by ch. 83, added subsection (3)(h) and made related redesignations.

#### **Legislative Intent.**

Section 1 of S.L. 1989, ch. 308 read: "(1) The legislature of the state of Idaho finds:

"(a) Waterborne nutrients, including phosphorus and nitrogen, provide nourishment for aquatic plants and fish.

"(b) Nutrient enrichment or overloading can result in overfeeding aquatic plant life, and a subsequent increase in the growth of algae.

"(c) Nitrogen, phosphorus and the other nutrient elements are naturally occurring el-

ements that exist in all living things and are essential to all life.

“(d) Nutrients enter the water through rainfall, land runoff, decomposition of plants and animals, and other nonpoint sources as well as from point sources, including discharges from industrial operations and sewage treatment facilities.

“(e) Effective nutrient management requires an understanding of a complicated array of technical factors, including nutrient sources, nutrient removal and use and the ability of a water body to clean itself.

“(f) State and federal agencies are currently conducting comprehensive technical analyses to determine the magnitude of nutrient enrichment in certain bodies of water in the state of Idaho and to recommend methods to resolve potential nutrient overloading.

“(g) A comprehensive statewide nutrient management plan offers a mechanism to facilitate collection and coordination of the information for a strong technical base to define methods to protect the rivers and lakes of the state of Idaho from nutrient overloading.

“(2) Therefore, it is hereby declared that the purposes of this act are:

“(a) To establish a comprehensive statewide nutrient management plan.

“(b) To develop the plan on a hydrologic basin unit basis with a lake system emphasis.

“(c) To affirm primary responsibility for nutrient management to the state to assure a consistent and effective program throughout the state.

“(d) To clearly express the legislature’s intent that comprehensive basin planning is necessary to optimize management actions designed to achieve the desired water quality benefits.”

Section 1 of S.L. 1991, ch. 332 read:

“(1) The legislature of the state of Idaho finds:”

“(a) That the waters of Priest lake are threatened with deterioration that may endanger that natural beauty, wildlife and fisheries value, recreational use and economic potential of Priest lake.”

“(b) That preservation and protection of Priest lake and maintenance of the use and enjoyment of the lake is in the best interest of all citizens of the state.”

“(c) Recreational use of Priest lake is an important element of the northern Idaho economy.”

“(d) Increasing demands upon the lake require coordinated state and local action to maintain the existing water quality of the lake.”

“(2) Therefore, it is hereby declared that the purposes of this act are:”

“(a) To establish a lake water quality management plan for Priest lake to maintain existing water quality in lieu of an outstanding resource water designation.”

“(b) To establish that the department of health and welfare is responsible for protecting the current water quality of Priest lake during the management plan development period.”

“(c) To provide that the final plan will be approved by the board of health and welfare and thereafter submitted to the legislature.”

### Federal References.

The federal water pollution control act, referred to in subsection (4), may be found in 33 USCS § 1251 et seq.

The federal clean air act is codified as 42 USCS § 7401 et seq. Title V of that act, referred to in subsection (3)(a), is compiled as 42 USCS § 7661 et seq.

### Compiler’s Notes.

Chapter 62, title 39, Idaho Code, referred to in subsection (1), was repealed by S.L. 2007, ch. 83, effective July 1, 2007. Chapter 64, title 39, Idaho Code, referred to in subsection (1), was repealed by S.L. 2010, ch. 59, effective July 1, 2010.

The term “this act” in subsection (2) refers to S.L. 1972, ch. 347, which is codified as §§ 39-101, 39-102, 39-105 to 39-107, 39-108, and 39-110 to 39-113.

The term “this act” in subdivision (3)(g)(v) refers to S.L. 1992, ch. 331, which is codified as §§ 39-105, 39-414, 39-7401, 39-7402, 39-7403 to 39-7408, 38-7409, 39-7412, 39-7413, and 39-7415 to 39-7420.

For further information on Idaho national laboratory, see <https://inlportal.inl.gov/portal/server.pt/community/home>.

Section 3 of S.L. 1988, ch. 39 read: “The Director of the Department of Health and Welfare shall be granted authority to appoint a Computer System Manager, who shall be exempt from the provisions of Chapter 53, Title 67, Idaho Code.”

Section 24 of S.L. 1993, ch. 139 read: “If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act.”

Section 1 of S.L. 1996, ch. 323 read: “Pursuant to the requirements of subsection 3.p. of Section 39-105, Idaho Code, the Priest Lake Management Plan, adopted in November, 1995, and amended February 16, 1996, be, and the same is hereby approved. The Legislature of the State of Idaho, state agencies and political subdivisions shall take appropriate actions to implement the plan. The Director of the Department of Health and Welfare shall, in cooperation with other state agencies, political subdivisions and the Priest Lake Planning Team, ensure consistency with the Priest Lake Management Plan and Chapter 36, Title 39, Idaho Code, so that the plan and its implementation are in concert with the provisions of Chapter 36, Title 39, Idaho Code.”



**Effective Dates.**

Section 4 of S.L. 1989, ch. 308 declared an emergency. Approved April 3, 1989.

Section 4 of S.L. 1992, ch. 331 declared an emergency. It became law without the governor's signature April 15, 1992.

Section 25 of S.L. 1993, ch. 139 declared an emergency. Approved March 25, 1993.

Section 39 of S.L. 2000, ch. 132 provides: "(1) This act shall be in full force and effect on and after July 1, 2000, except that the Division of Environmental Quality shall have one (1) year thereafter to accomplish necessary changes to complete the physical transition to the new department.

"(2) Notwithstanding any other provisions

of Chapter 52, Title 67, Idaho Code, the Administrative Rules Coordinator shall redesignate all references to the Division of Environmental Quality which appear in the master rule database maintained by the coordinator, to the Department of Environmental Quality without further republication or promulgation, to comply with the provisions of this act. Until such time as a republication of a rule occurs, any reference in a rule to the Division of Environmental Quality shall mean the Department of Environmental Quality."

Section 4 of S.L. 2004, ch. 335 declared an emergency. Approved March 24, 2004.

**JUDICIAL DECISIONS**

**Cited in:** State ex rel. Andrus v. Click, 97 Idaho 791, 554 P.2d 969 (1976).

**39-106. Director — Additional powers and duties — Transfer and continuation of rules and other proceedings.** — (1) The director shall exercise the following powers and duties in addition to all other powers and duties inherent in the position:

(a) Prescribe such policies and procedures as may be necessary for the administration of the department, the conduct and duties of the employees, the orderly and efficient management of department business, and the custody, use and preservation of department records, papers, books and property belonging to the state.

(b) Employ such personnel as may be deemed necessary, prescribe their duties and fix their compensation within the limits provided by the state personnel system law.

(c) Administer oaths for all purposes required in the discharge of his duties.

(d) Prescribe the qualifications of all personnel of the department on a nonpartisan merit basis, in accordance with the Idaho personnel system law, provided, however, that the administrators in charge of any division of the department shall serve at the pleasure of the director.

(e) Create such units, sections and subdivisions as are or may be necessary for the proper and efficient functioning of the department [I].

(2) [I] All books, records, papers, documents, property, real and personal, unexpended appropriations and pending business in any way pertaining to the rights, powers and duties regarding environmental protection functions vested in the department of health and welfare and its director, administered by the division of environmental quality, are transferred to and vested in the department and its director. The department established by this act is empowered to acquire, by purchase or exchange, any property which in the judgment of the department is needful for the operation of the facilities and programs for which it is responsible and to dispose of, by sale or exchange, any property which in the judgment of the department is not needful for the operation of the same.

(3) All rules, standards, plans, licenses, permits, consent orders, compliance schedules, certification, and other agreements pertaining to environ-



mental protection functions administered by the division of environmental quality heretofore adopted or issued by the [I] department of health and welfare and its director are transferred to the department of environmental quality and shall remain in full force and effect until superseded. The terms “department” and “director” in such documents shall mean the department of environmental quality and its director, until such documents are amended.

(4) The department of environmental quality and its director shall be the successor to all rights, powers and duties of the department of health and welfare and its director regarding all rulemaking proceedings, administrative proceedings, contested cases, civil actions, contracts, delegations, authorizations and other matters pertaining to environmental protection functions.

**History.**

1972, ch. 347, § 6, p. 1017; am. 1974, ch. 23, § 50, p. 633; am. 1987, ch. 223, § 2, p. 475;

am. 1990, ch. 56, § 2, p. 127; am. 2000, ch. 59, § 1, p. 125; am. 2000, ch. 132, § 9, p. 309.

**STATUTORY NOTES**

**Cross References.**

Personnel system, § 67-5301 et seq.

**Prior Laws.**

Former § 39-106 was repealed. See Prior Laws, § 39-101.

**Amendments.**

This section was amended by two 2000 acts which appear to be compatible and have been compiled together.

The 2000 amendment, by ch. 59, § 1, substituted “laws” for “Laws” throughout the section; in subdivision 1a, deleted “and regulations” following “such rules”; and in subdivision 1d, deleted “the state veterans homes,” following “administrators in charge of”.

The 2000 amendment, by ch. 132, § 9, rewrote this section.

**Compiler’s Notes.**

The bracketed letters in subdivision (1)(e) and subsections (2) and (3) were inserted by the compiler as a result of conforming the two 2000 amendments of this section.

The term “this act” in subsection (2) refers to S.L. 1974, ch. 23, which reorganized the

executive department in Idaho. Probably, the reference should be to “this chapter”, being chapter 1, title 39, Idaho Code.

**Effective Dates.**

Section 39 of S.L. 2000, ch. 132 provides: “(1) This act shall be in full force and effect on and after July 1, 2000, except that the Division of Environmental Quality shall have one (1) year thereafter to accomplish necessary changes to complete the physical transition to the new department.

“(2) Notwithstanding any other provisions of Chapter 52, Title 67, Idaho Code, the Administrative Rules Coordinator shall redesignate all references to the Division of Environmental Quality which appear in the master rule database maintained by the coordinator, to the Department of Environmental Quality without further republication or promulgation, to comply with the provisions of this act. Until such time as a republication of a rule occurs, any reference in a rule to the Division of Environmental Quality shall mean the Department of Environmental Quality.”

**JUDICIAL DECISIONS**

**Cited in:** *Salinas v. Amalgamated Sugar Co.*, 341 F. Supp. 311 (D. Idaho 1972).

**39-107. Board — Composition — Officers — Compensation — Powers — Subpoena — Depositions — Review — Rules. —**

(1)(a) The board of environmental quality shall consist of seven (7) members who shall be appointed by the governor, with the advice and consent of the senate. The members shall serve at the pleasure of the

governor. Each member of the board shall be a citizen of the United States, a resident of the state of Idaho, and a qualified elector, and shall be appointed to assure appropriate geographic representation of the state of Idaho. Not more than four (4) members of the board shall be from any one (1) political party. Two (2) members of the board shall be chosen with due regard to their knowledge and interest in solid waste; two (2) members shall be chosen for their knowledge of and interest in air quality; two (2) members shall be chosen for their knowledge of and interest in water quality; and one (1) member shall be chosen with due regard for his knowledge of and interest in air, water and solid waste issues.

(b) The members of the board of environmental quality shall be appointed for a term of four (4) years. In appointing members whose terms begin in 2000, the governor shall designate three (3) members to be appointed for a term of three (3) years, two (2) members appointed for a term of four (4) years, and two (2) members appointed for a term of two (2) years. Successors to the members appointed for a term of less than four (4) years shall be appointed for a term of four (4) years thereafter.

(2) The board annually shall elect a chairman, a vice chairman, and a secretary, and shall hold such meetings as may be necessary for the orderly conduct of its business, and such meetings shall be held from time to time on seventy-two (72) hours' notice of the chairman or a majority of the members. Five (5) members shall be necessary to constitute a quorum at any regular or special meeting and the action of the majority of members present shall be the action of the board. The members of the board shall be compensated as provided in section 59-509(h), Idaho Code.

(3) The board, in furtherance of its duties under this act and under its rules, shall have the power to administer oaths, certify to official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony. The board may, if a witness refuses to attend or testify, or to produce any papers required by such subpoenas, report to the district court in and for the county in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place of attendance of said witnesses, or the production of said papers, that the witness has been properly summoned, and that the witness has failed and refused to attend or produce the papers required by this subpoena before the board, or has refused to answer questions propounded to him in the course of said proceedings, and ask an order of said court compelling the witness to attend and testify and produce said papers before the board. The court, upon the petition of the board, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such order, the time to be not more than ten (10) days from the date of the order, and then and there shall show cause why he has not attended and testified or produced said papers before the board. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the board and regularly served, the court shall thereupon order that said witness appear before the board at the time and place fixed in said order, and testify or produce the required papers. Upon failure to obey said order, said witness shall be dealt with for contempt of court.



(4) The director, his designee, or any party to the action may, in an investigation or hearing before the board, cause the deposition or interrogatory of witnesses or parties residing within or without the state, to be taken in the manner prescribed by law for like depositions and interrogatories in civil actions in the district court of this state, and to that end may compel the attendance of said witnesses and production of books, documents, papers and accounts.

(5) Any person aggrieved by an action or inaction of the department shall be afforded an opportunity for a fair hearing upon request therefor in writing pursuant to chapter 52, title 67, Idaho Code, and the rules promulgated thereunder. In those cases where the board has been granted the authority to hold such a hearing pursuant to a provision of the Idaho Code, the hearing may be conducted by the board at a regular or special meeting, or the board may designate hearing officers, who shall have the power and authority to conduct hearings in the name of the board at any time and place. In any hearing, a member of the board or hearing officer designated by it, shall have the power to administer oaths, examine witnesses, and issue in the name of the board subpoenas requiring the testimony of witnesses and the production of evidence relevant to any matter in the hearing.

(6) Any person adversely affected by a final determination of the board, may secure judicial review by filing a petition for review as prescribed under the provisions of chapter 52, title 67, Idaho Code. The petition for review shall be served upon the chairman of the board, the director of the department, and upon the attorney general of the state of Idaho. Such service shall be jurisdictional and the provisions of this section shall be the exclusive procedure for appeal.

(7) The board, by the affirmative vote of four (4) of its members, may adopt, amend or repeal the rules, codes, and standards of the department, that are necessary and feasible in order to carry out the purposes and provisions of this act and to enforce the laws of this state.

The rules and orders so adopted and established shall have the force and effect of law and may deal with any matters deemed necessary and feasible for protecting the environment of the state.

(8) All rulemaking proceedings and hearings of the board shall be governed by the provisions of chapter 52, title 67, Idaho Code.

(9) The board shall adopt contested case rules that are consistent with the rules adopted by the attorney general under section 67-5206(4), Idaho Code, the provisions of this act and other statutory authority of the department.

(10) All rules, permits and other actions heretofore adopted, issued or taken by the board of health and welfare pertaining to the environmental protection functions administered by the division of environmental quality shall remain in full force and effect until superseded.

(11) The board of environmental quality shall be the successor to all rights, powers and duties of the board of health and welfare regarding all rulemaking proceedings, administrative proceedings, contested cases, civil actions, contracts, delegations, authority and other matters pertaining to environmental protection functions administered by the division of environmental quality.



(12) Upon creation of the board of environmental quality, all pending business before the board of health and welfare relating to environmental protection functions administered by the division of environmental quality shall be transferred to and determined by the board of environmental quality.

**History.**

1972, ch. 347, § 7, p. 1017; am. 1974, ch. 23, § 51, p. 633; am. 1978, ch. 45, § 2, p. 80; am. 1980, ch. 34, § 1, p. 57; am. 1980, ch. 247,

§ 32, p. 582; am. 1980, ch. 325, § 2, p. 820; am. 1981, ch. 122, § 1, p. 208; am. 1993, ch. 216, § 23, p. 587; am. 2000, ch. 132, § 10, p. 309.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.  
Contempts, § 7-601 et seq.

**Prior Laws.**

Former § 39-107 was repealed. See Prior Laws, § 39-101.

**Compiler's Notes.**

The term "this act" in subsections (3) and (7) refer to S.L. 1972, ch. 347, which is codified as §§ 39-101, 39-102, 39-105 to 39-107, 39-108, and 39-110 to 39-113.

The term "this act" in subsection (9) refers to S.L. 2000, ch. 132, which is codified throughout the Idaho Code.

**Effective Dates.**

Section 17 of S.L. 1972, ch. 347 provided this act shall take effect from and after July 1, 1972.

Section 11 of S.L. 1980, ch. 325 declared an emergency. Approved April 2, 1980.

Section 39 of S.L. 2000, ch. 132 provides: "(1) This act shall be in full force and effect on and after July 1, 2000, except that the Division of Environmental Quality shall have one (1) year thereafter to accomplish necessary changes to complete the physical transition to the new department.

"(2) Notwithstanding any other provisions of Chapter 52, Title 67, Idaho Code, the Administrative Rules Coordinator shall redesignate all references to the Division of Environmental Quality which appear in the master rule database maintained by the coordinator, to the Department of Environmental Quality without further republication or promulgation, to comply with the provisions of this act. Until such time as a republication of a rule occurs, any reference in a rule to the Division of Environmental Quality shall mean the Department of Environmental Quality."

**39-107A. Real property in Bunker Hill cleanup site.** — Notwithstanding any other provision of law to the contrary, the department may accept transfer from the United States of any real property or interest in real property acquired by the United States for remediation purposes concerning any operable unit of the Bunker Hill Superfund Site pursuant to 42 U.S.C. section 9604(j). The state of Idaho shall incur no liability nor be subject to any claims related to the existence, release or threatened release of any hazardous substance or contaminant or pollutant on, or from, any such real property. The department may, in its sole discretion, manage, lease or dispose of such property for the purpose of facilitating appropriate operation and maintenance activities, encouraging economic development or assisting local governmental entities within the site. The management, lease or disposal of such property shall not be subject to chapter 3, title 58, Idaho Code. Any receipts from the management, lease or disposal of such property shall be deposited in the Bunker Hill Cleanup Trust Fund established by the Trust Fund Declaration of the state of Idaho dated May 2, 1994 (Attachment M, Consent Decree, United States of America v. Asarco, Inc. No. CV-94-0206-N-HLR (D. Idaho)) for the purpose of funding institutional control or operation and maintenance activities regarding the site.

**History.**

I.C., § [39-107A] 39-107a, as added by 1996, ch. 205, § 1, p. 629; am. 2000, ch. 21,

§ 1, p. 41; am. 2000, ch. 132, § 11, p. 309; am. 2009, ch. 8, § 1, p. 10.

**STATUTORY NOTES****Prior Laws.**

Former § 39-107a, which comprised S.L. 1973, ch. 87, § 5, was repealed by S.L. 1974, ch. 23, § 1.

**Amendments.**

This section was amended by two 2000 acts which appear to be compatible and have been compiled together.

The 2000 amendment, by ch. 21, § 1, effective March 3, 2000, in the present third sentence, substituted “The department” for “Any such real property which has a public use or commercial value and which is not useful or usable by the department”, added “may, in its sole discretion, manage, lease or dispose of such property for the purpose of facilitating appropriate operation and maintenance activities, encouraging economic development of the Silver Valley or assisting local governmental entities.”; in the present fourth sentence, added “The management, lease or disposal of such property”, inserted “not” preceding “be subject to”, substituted “chapter 3, title 58” for “sections 58-331 through 58-335”, deleted “, except that any” following “Idaho Code”; in the last sentence, added “Any” preceding “receipts from”, inserted “management, lease or” preceding “disposal of such property”, and substituted “Attachment M” for “Attachment N”.

The 2000 amendment, by ch. 132, § 1, effective July 1, 2000, deleted “of health and

welfare” following “the department” in two places.

The 2009 amendment, by ch. 8, in the first sentence, inserted “any operable unit of” and, in the third sentence, deleted “of the Silver Valley” following “economic development” and added “within the site.”

**Effective Dates.**

Section 2 of S.L. 2000, ch. 21 declared an emergency. Approved March 3, 2000.

Section 39 of S.L. 2000, ch. 132 provides: “(1) This act shall be in full force and effect on and after July 1, 2000, except that the Division of Environmental Quality shall have one (1) year thereafter to accomplish necessary changes to complete the physical transition to the new department.

“(2) Notwithstanding any other provisions of Chapter 52, Title 67, Idaho Code, the Administrative Rules Coordinator shall redesignate all references to the Division of Environmental Quality which appear in the master rule database maintained by the coordinator, to the Department of Environmental Quality without further republication or promulgation, to comply with the provisions of this act. Until such time as a republication of a rule occurs, any reference in a rule to the Division of Environmental Quality shall mean the Department of Environmental Quality.”

**39-107B. Department of environmental quality fund.** — (1) There is hereby created a fund in the state treasury to be known as the department of environmental quality fund and all moneys deposited therein shall be available to be appropriated to the department of environmental quality for purposes for which the department was established.

(2) All federal grants, fees for services, permitting fees, other program income and transfers from other funds subject to administration by the director of the department of environmental quality shall be placed in the fund provided that the statewide accounting and reporting system must provide for identification of the balance of each funding source within the fund.

(3) The state controller shall make transfers to the fund from the general fund and any other funds appropriated to the department of environmental quality as requested by the director of the department and approved by the board of examiners.

**History.**

I.C., § 39-107B, as added by 2000, ch. 132, § 12, p. 309.



## STATUTORY NOTES

**Cross References.**

State controller, § 67-1001 et seq.

**Prior Laws.**

Former § 39-107b, which comprised S.L. 1973, ch. 87, § 11, was repealed by S.L. 1974, ch. 23, § 1.

**Effective Dates.**

Section 39 of S.L. 2000, ch. 132 provides: "(1) This act shall be in full force and effect on and after July 1, 2000, except that the Division of Environmental Quality shall have one (1) year thereafter to accomplish necessary changes to complete the physical transition to the new department.

"(2) Notwithstanding any other provisions of Chapter 52, Title 67, Idaho Code, the Administrative Rules Coordinator shall redesignate all references to the Division of Environmental Quality which appear in the master rule database maintained by the coordinator, to the Department of Environmental Quality without further republication or promulgation, to comply with the provisions of this act. Until such time as a republication of a rule occurs, any reference in a rule to the Division of Environmental Quality shall mean the Department of Environmental Quality."

**39-107C. Environmental protection trust fund established. —**

The director of the department of environmental quality may receive on behalf of the department any moneys or real or personal property donated, bequeathed, devised or conditionally granted to the department. Moneys received directly or derived from the sale of such property shall be deposited by the state treasurer in a special fund to be known as the environmental protection trust fund which is hereby established, reserved, set aside, appropriated and made available until expended and used and administered to carry out the terms and conditions of such donation, bequest, devise or grant. Pending such expenditure or use, surplus moneys in the environmental protection trust fund shall be invested by the state treasurer in the manner provided for idle state moneys in the state treasury by section 67-1210, Idaho Code. Interest received on all such investments shall be paid into the environmental protection trust fund.

**History.**

I.C., § 39-107C, as added by 2000, ch. 132, § 13, p. 309.

## STATUTORY NOTES

**Effective Dates.**

Section 39 of S.L. 2000, ch. 132 provides: "(1) This act shall be in full force and effect on and after July 1, 2000, except that the Division of Environmental Quality shall have one (1) year thereafter to accomplish necessary changes to complete the physical transition to the new department.

"(2) Notwithstanding any other provisions of Chapter 52, Title 67, Idaho Code, the Administrative Rules Coordinator shall redesignate all references to the Division of Environmental Quality which appear in the master rule database maintained by the coordinator, to the Department of Environmental Quality without further republication or promulgation, to comply with the provisions of this act. Until such time as a republication of a rule occurs, any reference in a rule to the Division of Environmental Quality shall mean the Department of Environmental Quality."

nate all references to the Division of Environmental Quality which appear in the master rule database maintained by the coordinator, to the Department of Environmental Quality without further republication or promulgation, to comply with the provisions of this act. Until such time as a republication of a rule occurs, any reference in a rule to the Division of Environmental Quality shall mean the Department of Environmental Quality."

**39-107D. Rules of department or board. —** (1) The legislature directs that any rule formulated and recommended by the department to the board which is broader in scope or more stringent than federal law or regulations, or proposes to regulate an activity not regulated by the federal government, is subject to the following additional requirements: the notice of proposed rulemaking and rulemaking record requirements under chapter



52, title 67, Idaho Code, must clearly specify that the proposed rule, or portions of the proposed rule, are broader in scope or more stringent than federal law or regulations, or regulate an activity not regulated by the federal government, and delineate which portions of the proposed rule are broader in scope or more stringent than federal law or regulations, or regulate an activity not regulated by the federal government.

(2) To the degree that a department action is based on science, in proposing any rule or portions of any rule subject to this section, the department shall utilize:

- (a) The best available peer reviewed science and supporting studies conducted in accordance with sound and objective scientific practices; and
- (b) Data collected by accepted methods or best available methods if the reliability of the method and the nature of the decision justify use of the data.

(3) Any proposed rule subject to this section which proposes a standard necessary to protect human health and the environment shall also include in the rulemaking record requirements under chapter 52, title 67, Idaho Code, the following additional information:

- (a) Identification of each population or receptor addressed by an estimate of public health effects or environmental effects; and
- (b) Identification of the expected risk or central estimate of risk for the specific population or receptor; and
- (c) Identification of each appropriate upper bound or lower bound estimate of risk; and
- (d) Identification of each significant uncertainty identified in the process of the assessment of public health effects or environmental effects and any studies that would assist in resolving the uncertainty; and
- (e) Identification of studies known to the department that support, are directly relevant to, or fail to support any estimate of public health effects or environmental effects and the methodology used to reconcile inconsistencies in the data.

(4) The department shall also include a summary of the information required by subsection (3) of this section in the notice of rulemaking required by chapter 52, title 67, Idaho Code.

(5) Any rule promulgated or adopted by the board which is broader in scope or more stringent than federal law or regulations, or which regulates an activity not regulated by the federal government, submitted to the standing committee of the legislature pursuant to section 67-5291, Idaho Code, shall include a notice by the board identifying the portions of the adopted rule that are broader in scope or more stringent than federal law or rules, or which regulate an activity not regulated by the federal government.

(6) Nothing provided herein is intended to alter the scope or effect of sections 39-105(3)(g)(v), 39-118B, 39-3601, 39-4404, 39-7210 and 39-7404, Idaho Code, or any other provision of state law which limits or prohibits agency action or rulemaking that is broader in scope or more stringent than federal law or regulations.

**History.**

I.C., § 39-107D, as added by 2002, ch. 144,

§ 1, p. 405; am. 2003, ch. 259, § 1, p. 682; am. 2007, ch. 83, § 3, p. 221.

## STATUTORY NOTES

**Amendments.**

The 2007 amendment, by ch. 83, deleted (6). “39-6205” following “39-4404” in subsection

**39-108. Investigation — Inspection — Right of entry — Violation — Enforcement — Penalty — Injunctions.** — (1) The director shall cause investigations to be made upon receipt of information concerning an alleged violation of this act or of any rule, permit or order promulgated thereunder, and may cause to be made such other investigations as the director shall deem advisable.

(2) For the purpose of enforcing any provision of this chapter or any rule authorized in this chapter, the director or the director’s designee shall have the authority to:

(a) Conduct a program of continuing surveillance and of regular or periodic inspection of actual or potential environmental hazards, air contamination sources, water pollution sources, and of solid waste disposal sites;

(b) Enter at all reasonable times upon any private or public property, upon presentation of appropriate credentials, for the purpose of inspecting or investigating to ascertain possible violations of this act or of rules, permits or orders adopted and promulgated by the director or the board;

(c) All inspections and investigations conducted under the authority of this chapter shall be performed in conformity with the prohibitions against unreasonable searches and seizures contained in the fourth amendment to the constitution of the United States and section 17, article I, of the constitution of the state of Idaho. The state shall not, under the authority granted by this chapter, conduct warrantless searches of private property in the absence of either consent from the property owner or occupier or exigent circumstances such as a public health or environmental emergency;

(d) Any district court in and for the county in which the subject property is located is authorized to issue a search warrant to the director upon a showing of (i) probable cause to suspect a violation, or (ii) the existence of a reasonable program of inspection. Any search warrant issued under the authority of this chapter shall be limited in scope to the specific purposes for which it is issued and shall state with specificity the manner and the scope of the search authorized.

(3) Whenever the director determines that any person is in violation of any provision of this act or any rule, permit or order issued or promulgated pursuant to this act, the director may commence either of the following:

(a) Administrative Enforcement Action.

(i) Notice. The director may commence an administrative enforcement action by issuing a written notice of violation. The notice of violation shall identify the alleged violation with specificity, shall specify each provision of the act, rule, regulation, permit or order which has been violated, and shall state the amount of civil penalty claimed for each violation. The notice of violation shall inform the person to whom it is directed of an opportunity to confer with the director or the director’s designee in a compliance conference concerning the alleged violation. A



written response may be required within fifteen (15) days of receipt of the notice of violation by the person to whom it is directed.

(ii) Scheduling compliance conference. If a recipient of a notice of violation contacts the department within fifteen (15) days of the receipt of the notice, the recipient shall be entitled to a compliance conference. The conference shall be held within twenty (20) days of the date of receipt of the notice, unless a later date is agreed upon between the parties. If a compliance conference is not requested, the director may proceed with a civil enforcement action as provided in paragraph (b) of this subsection.

(iii) Compliance conference. The compliance conference shall provide an opportunity for the recipient of a notice of violation to explain the circumstances of the alleged violation and, where appropriate, to present a proposal for remedying damage caused by the alleged violation and assuring future compliance.

(iv) Consent order. If the recipient and the director agree on a plan to remedy damage caused by the alleged violation and to assure future compliance, they may enter into a consent order formalizing their agreement. The consent order may include a provision providing for payment of any agreed civil penalty.

(v) Effect of consent order. A consent order shall be effective immediately upon signing by both parties and shall preclude any civil enforcement action for the same alleged violation. If a party does not comply with the terms of the consent order, the director may seek and obtain, in any appropriate district court, specific performance of the consent order and such other relief as authorized in this chapter.

(vi) Failure to reach consent order. If the parties cannot reach agreement on a consent order within sixty (60) days after the receipt of the notice of violation or if the recipient does not request a compliance conference as per paragraph (a)(ii) of this section, the director may commence and prosecute a civil enforcement action in district court, in accordance with subsection (b) of this section.

(b) Civil enforcement action. The director may initiate a civil enforcement action through the attorney general as provided in section 39-109, Idaho Code. Civil enforcement actions shall be commenced and prosecuted in the district court in and for the county in which the alleged violation occurred, and may be brought against any person who is alleged to have violated any provision of this act or any rule, permit or order which has become effective pursuant to this act. Such action may be brought to compel compliance with any provision of this act or with any rule, permit or order promulgated hereunder and for any relief or remedies authorized in this act. The director shall not be required to initiate or prosecute an administrative action before initiating a civil enforcement action.

(4) No civil or administrative proceeding may be brought to recover for a violation of any provision of this chapter or a violation of any rule, permit or order issued or promulgated pursuant to this chapter, more than two (2) years after the director had knowledge or ought reasonably to have had knowledge of the violation.

(5) Monetary penalties.



(a) Any person determined in a civil enforcement action to have violated any provision of this act or any rule, permit or order promulgated pursuant to this act shall be liable for a civil penalty not to exceed ten thousand dollars (\$10,000) per violation or one thousand dollars (\$1,000) for each day of a continuing violation, whichever is greater or ten thousand dollars (\$10,000) for each separate air violation and day of continuing air violation. The method of recovery of said penalty shall be by a civil enforcement action in the district court in and for the county where the violation occurred. All civil penalties collected under this act shall be paid into the general fund of the state. Parties to an administrative enforcement action may agree to a civil penalty as provided in this subsection.

(b) The imposition or computation of monetary penalties may take into account the seriousness of the violation, good faith efforts to comply with the law, and an enforceable commitment by the person against whom the penalty is directed to implement a supplemental environmental project. For purposes of this section, "supplemental environmental project" means a project which the person is not otherwise required to perform and which prevents pollution, reduces the amount of pollutants reaching the environment, contributes to public awareness of environmental matters, or enhances the quality of the environment. In evaluating a particular supplemental environmental project proposal, preference may be given to those projects with an environmental benefit which relate to the violation or the objectives of the underlying statute which was violated or which enhances the quality of the environment in the general geographic location where the violation occurred.

(6) In addition to such civil penalties, any person who has been determined to have violated the provisions of this act or the rules, permits or orders promulgated thereunder, shall be liable for any expense incurred by the state in enforcing the act, or in enforcing or terminating any nuisance, source of environmental degradation, cause of sickness, or health hazard.

(7) No action taken pursuant to the provisions of this act or of any other environmental protection law shall relieve any person from any civil action and damages that may exist for injury or damage resulting from any violation of this act or of the rules, permits and orders promulgated thereunder.

(8) In addition to, and notwithstanding other provisions of this act, in circumstances of emergency creating conditions of imminent and substantial danger to the public health or environment, the prosecuting attorney or the attorney general may institute a civil action for an immediate injunction to halt any discharge, emission or other activity in violation of provisions of this act or rules, permits and orders promulgated thereunder. In such action the court may issue an ex parte restraining order.

**History.**

1972, ch. 347, § 8, p. 1017; am. 1974, ch. 23, § 52, p. 633; am. 1986, ch. 60, § 2, p. 169; am.

1993, ch. 275, § 5, p. 926; am. 1997, ch. 94, § 2, p. 219; am. 2000, ch. 132, § 16, p. 309.

## STATUTORY NOTES

### Cross References.

Attorney general, § 67-1401 et seq.

### Prior Laws.

Former § 39-108 was repealed. See Prior Laws, § 39-101.

### Compiler's Notes.

The term "this act" in subsection (1), subdivision (2)(b), subdivision (5)(a), subsection (6), the first sentence in subsection (7), and subsection (8), refer to S.L. 1972, ch. 347, which is codified as §§ 39-101, 39-102, 39-105 to 39-107, 39-108, and 39-110 to 39-113.

The term "this act" in the introductory paragraph in subsection (3), in subdivision (3)(b), and in the second sentence in subsection (7), refers to S.L. 1986, ch. 60, which is codified as §§ 39-101, 39-108 to 39-111, 39-116, 39-117, and 39-118.

### Effective Dates.

Section 39 of S.L. 2000, ch. 132 provides: "(1) This act shall be in full force and effect on and after July 1, 2000, except that the Division of Environmental Quality shall have one (1) year thereafter to accomplish necessary changes to complete the physical transition to the new department.

"(2) Notwithstanding any other provisions of Chapter 52, Title 67, Idaho Code, the Administrative Rules Coordinator shall redesignate all references to the Division of Environmental Quality which appear in the master rule database maintained by the coordinator, to the Department of Environmental Quality without further republication or promulgation, to comply with the provisions of this act. Until such time as a republication of a rule occurs, any reference in a rule to the Division of Environmental Quality shall mean the Department of Environmental Quality."

## JUDICIAL DECISIONS

### ANALYSIS

Expense.

Limitation on actions.

### Expense.

The phrase "any expense" in this section was not intended to include attorney fees. *Idaho Dep't of Health & Welfare v. Southfork Lumber Co.*, 123 Idaho 146, 845 P.2d 564 (1993).

The legislature has made it clear that an award of expenses under this chapter is mandatory and unqualified, stating that a person who violates the act "shall be liable for any expense." By using the term "any expense" rather than "costs", the legislature apparently intended a more extensive recovery of costs than is contemplated by § 12-101 and *Idaho R. Civ. P. 54(d)(1)*. For this reason, the trial court should consider a request for costs

according to subsection (6) of this section rather than *Idaho R. Civ. P. 54(d)(1)*. *Idaho Dep't of Health & Welfare v. Southfork Lumber Co.*, 123 Idaho 146, 845 P.2d 564 (1993).

### Limitation on Actions.

Since this chapter does not provide its own statute of limitation, the four-year limitation provided by § 5-224 applies to actions brought under it. *Aetna Cas. & Sur. Co. v. Gulf Resources & Chem. Corp.*, 600 F. Supp. 797 (D. Idaho 1985).

**Cited in:** *Idaho v. Bunker Hill Co.*, 635 F. Supp. 665 (D. Idaho 1986).

**39-109. Commencement of civil enforcement actions — Criminal actions authorized — Duties of attorney general.** — Upon request of the director, it shall be the duty of the attorney general to institute and prosecute civil enforcement actions or injunctive actions as provided in section 39-108, Idaho Code, and to prosecute actions or proceedings for the enforcement of any criminal provisions of this chapter. In addition, when deemed by the director to be necessary, the director may retain or employ private counsel. The attorney general may delegate the authority and duty under this section to prosecute criminal actions to the prosecuting attorney of the county in which such a criminal action may arise.



**History.**

I.C., § 39-109, as added by 1986, ch. 60, § 4, p. 169; am. 2000, ch. 132, § 17, p. 309.

**STATUTORY NOTES****Cross References.**

Attorney general, § 67-1401 et seq.

**Prior Laws.**

Former § 39-109, which comprised S.L. 1972, ch. 347, § 9, p. 1017; am. 1974, ch. 23, § 53, p. 633, was repealed by S.L. 1986, ch. 60, § 3.

Another former § 39-109 was repealed. See Prior Laws, § 39-101.

**Effective Dates.**

Section 39 of S.L. 2000, ch. 132 provides: "(1) This act shall be in full force and effect on and after July 1, 2000, except that the Division of Environmental Quality shall have one (1) year thereafter to accomplish necessary

changes to complete the physical transition to the new department.

"(2) Notwithstanding any other provisions of Chapter 52, Title 67, Idaho Code, the Administrative Rules Coordinator shall redesignate all references to the Division of Environmental Quality which appear in the master rule database maintained by the coordinator, to the Department of Environmental Quality without further republication or promulgation, to comply with the provisions of this act. Until such time as a republication of a rule occurs, any reference in a rule to the Division of Environmental Quality shall mean the Department of Environmental Quality."

**39-110. Registration of persons engaged in operations or construction where air pollution is a factor — Reports.** — The director may require the registration of persons engaged in operations which may result in air pollution, and of persons causing, permitting or allowing construction of any facility or new equipment capable of emitting air contaminants into the atmosphere, or designed to eliminate or reduce emissions into the atmosphere, and the filing of reports by them with the department relating to locations, size of outlet, height of outlet, rate and period of emission and composition of effluent, and such other information as the director shall prescribe relative to air pollution.

**History.**

1972, ch. 347, § 10, p. 1017; am. 1986, ch.

60, § 5, p. 169; am. 2000, ch. 132, § 18, p. 309.

**STATUTORY NOTES****Prior Laws.**

Former § 39-110 was repealed. See Prior Laws, § 39-101.

**Effective Dates.**

Section 39 of S.L. 2000, ch. 132 provides: "(1) This act shall be in full force and effect on and after July 1, 2000, except that the Division of Environmental Quality shall have one (1) year thereafter to accomplish necessary changes to complete the physical transition to the new department.

"(2) Notwithstanding any other provisions

of Chapter 52, Title 67, Idaho Code, the Administrative Rules Coordinator shall redesignate all references to the Division of Environmental Quality which appear in the master rule database maintained by the coordinator, to the Department of Environmental Quality without further republication or promulgation, to comply with the provisions of this act. Until such time as a republication of a rule occurs, any reference in a rule to the Division of Environmental Quality shall mean the Department of Environmental Quality."

**39-111. Availability of records.** — Any records or other information furnished to the board, department or to agents, contractors, or other representatives of the department under any provisions of this chapter shall be subject to disclosure according to chapter 3, title 9, Idaho Code.



**History.**

1972, ch. 347, § 11, p. 1017; am. 1974, ch. 23, § 54, p. 633; am. 1986, ch. 60, § 6, p. 169;

am. 1990, ch. 213, § 34, p. 480; am. 1998, ch. 125, § 2, p. 461; am. 2000, ch. 132, § 19, p. 309.

**STATUTORY NOTES****Prior Laws.**

Former § 39-111 was repealed. See Prior Laws, § 39-101.

**Effective Dates.**

Section 111 of S.L. 1990, ch. 213 as amended by § 16 of S.L. 1991, ch. 329 provided that §§ 3 through 45 and 48 through 110 of the act should take effect July 1, 1993 and that §§ 1, 2, 46 and 47 should take effect July 1, 1990.

Section 5 of S.L. 1998, ch. 125 declared an emergency. Approved March 19, 1998

Section 39 of S.L. 2000, ch. 132 provides: “(1) This act shall be in full force and effect on and after July 1, 2000, except that the Division of Environmental Quality shall have one

(1) year thereafter to accomplish necessary changes to complete the physical transition to the new department.

“(2) Notwithstanding any other provisions of Chapter 52, Title 67, Idaho Code, the Administrative Rules Coordinator shall redesignate all references to the Division of Environmental Quality which appear in the master rule database maintained by the coordinator, to the Department of Environmental Quality without further republication or promulgation, to comply with the provisions of this act. Until such time as a republication of a rule occurs, any reference in a rule to the Division of Environmental Quality shall mean the Department of Environmental Quality.”

**39-112. Emergency — Order — Hearing — Modification, affirmance, or setting aside. —**

(1) Any other provision of law to the contrary notwithstanding, if the director finds that a generalized condition of air pollution exists and that it creates an imminent and substantial endangerment to the public health or welfare constituting an emergency requiring immediate action to protect human health or safety, the director, with the concurrence of the governor as to the existence of such an emergency shall order persons causing or contributing to the air pollution to reduce or discontinue immediately the emission of air contaminants, and such order shall fix a time and place, not later than twenty-four (24) hours thereafter, for a hearing to be held before the director. Not more than twenty-four (24) hours after the commencement of such hearing, and without adjournment thereof, the director shall affirm, modify or set aside its order.

(2) In the absence of a generalized condition of air pollution of the type referred to in subsection (1) of this section, if the director finds that emissions from the operation of one (1) or more air contaminant sources is causing imminent and substantial danger to human health or safety the director may bring suit through the attorney general in the appropriate district court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to such pollution. If it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of such civil action, the director may order the person or persons responsible for the operation or operations in question to reduce or discontinue emissions immediately without regard to other provisions of this act. In such event, the requirements for hearing and affirmance, modification or setting aside of an order set forth in subsection (1) of this section shall apply. For purposes of subsections (1) and (2) of this section, imminent and substantial endangerment or danger shall be interpreted no more broadly than these words are interpreted under section 303 of the clean air act, 42 USC 7603.

(3) Nothing in this section shall be construed to limit any power which the governor or any other officer may have to declare an emergency and act on the basis of such declaration, if such power is conferred by statute or constitutional provision, or inheres in the office.

**History.**

1972, ch. 347, § 12, p. 1017; am. 2000, ch. 132, § 20, p. 309.

**STATUTORY NOTES****Cross References.**

Attorney general, § 67-1401 et seq.

**Prior Laws.**

Former § 39-112 was repealed. See Prior Laws, § 39-101.

**Compiler's Notes.**

The term "this act" in subsection (2) refers to S.L. 1972, ch. 347, which is codified as §§ 39-101, 39-102, 39-105 to 39-107, 39-108, and 39-110 to 39-113.

**Effective Dates.**

Section 39 of S.L. 2000, ch. 132 provides: "(1) This act shall be in full force and effect on and after July 1, 2000, except that the Division of Environmental Quality shall have one

(1) year thereafter to accomplish necessary changes to complete the physical transition to the new department.

"(2) Notwithstanding any other provisions of Chapter 52, Title 67, Idaho Code, the Administrative Rules Coordinator shall redesignate all references to the Division of Environmental Quality which appear in the master rule database maintained by the coordinator, to the Department of Environmental Quality without further republication or promulgation, to comply with the provisions of this act. Until such time as a republication of a rule occurs, any reference in a rule to the Division of Environmental Quality shall mean the Department of Environmental Quality."

**39-113. Transfer of employees.** — All employees of the division of environmental quality and the INEEL oversight program of the department of health and welfare are transferred to the department of environmental quality. Such transfer shall in no manner affect the rights or privileges of any transferred employee under the public employee retirement system (chapter 13, title 59, Idaho Code), the group insurance plan (chapter 12, title 59, Idaho Code), or personnel system (chapter 53, title 67, Idaho Code). Additionally, when the department of health and welfare is used in terms of environmental protection, it shall mean the department of environmental quality.

**History.**

1972, ch. 347, § 15, p. 1017; am. 2000, ch. 132, § 21, p. 309.

**STATUTORY NOTES****Prior Laws.**

Former § 39-113 was repealed. See Prior Laws, § 39-101.

**Compiler's Notes.**

Chapter 12, title 59, Idaho Code, referred to in this section, has been repealed and redesignated. See §§ 67-5761 to 67-5771 for group insurance plans.

**Effective Dates.**

Section 39 of S.L. 2000, ch. 132 provides: "(1) This act shall be in full force and effect on

and after July 1, 2000, except that the Division of Environmental Quality shall have one (1) year thereafter to accomplish necessary changes to complete the physical transition to the new department.

"(2) Notwithstanding any other provisions of Chapter 52, Title 67, Idaho Code, the Administrative Rules Coordinator shall redesignate all references to the Division of Environmental Quality which appear in the master rule database maintained by the coordinator, to the Department of Environmental Quality



without further republication or promulgation, to comply with the provisions of this act. Until such time as a republication of a rule

occurs, any reference in a rule to the Division of Environmental Quality shall mean the Department of Environmental Quality.”

**39-114. Open burning of crop residue.** — (1) The open burning of crop residue to develop physiological conditions conducive to increase crop yields, or to control diseases, insects, pests or weed infestations shall be an allowable form of open burning, such that it is expressly authorized as referenced in section 52-108, Idaho Code, so long as the open burning is conducted in accordance with the provisions of this section and the rules promulgated pursuant to this chapter.

(2) Crop residue means any vegetative material remaining in the field after harvest or vegetative material produced on designated conservation reserve program (CRP) lands.

(3) The open burning of crop residue shall be conducted in the field where it was generated. A burn may not take place without preapproval from the department. The department shall not approve a burn if it determines that ambient air quality levels:

- (a) Are exceeding, or are expected to exceed, seventy-five percent (75%) of the level of any national ambient air quality standard on any day, and these levels are projected to continue or recur over at least the next twenty-four (24) hours; or
- (b) Have reached, or are forecasted to reach and persist at, eighty percent (80%) of the one (1) hour action criteria for particulate matter pursuant to section 556 of IDAPA 58.01.01, rules for the control of air pollution in Idaho.

The department shall make available to the public, prior to the burn, information regarding the date of the burn, location, acreage and crop type to be burned. If the agricultural community desires to burn more than twenty thousand (20,000) acres annually of bluegrass within the state, that does not include Indian or tribal lands within the reservation boundaries as recognized by the federal clean air act, then, prior to approving the burning of the additional acres, the department shall complete an air quality review analysis to determine that the ambient air quality levels in this section will be met.

(4) A fee in an amount of two dollars (\$2.00) per acre to be burned shall be paid to the department prior to burning. This fee shall not apply to propane flaming, as defined in the rules promulgated pursuant to this chapter. The department shall remit all fees quarterly to the state treasurer, who shall deposit the moneys in the general fund.

**History.**

I.C., § 39-114, as added by 2008, ch. 71,  
§ 1, p. 186; am. 2011, ch. 51, § 1, p. 115.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-114, which comprised 1972,

ch. 347, § 16, p. 1017; am. 1974, ch. 23, § 55,  
p. 633, was repealed by S.L. 2000, ch. 132,



§ 22, effective July 1, 2000.

Another former § 39-114 was repealed. See Prior Laws, § 39-101.

#### **Amendments.**

The 2011 amendment, by ch. 51, inserted the second sentence in subsection (4).

#### **Federal References.**

The federal clean air act, referred to in the

last paragraph of subsection (3), is codified as 42 U.S.C.S. § 7401 et seq.

#### **Compiler's Notes.**

The letters "CRP" enclosed in parentheses so appeared in the law as enacted.

#### **Effective Dates.**

Section 6 of S.L. 2008, ch. 71 declared an emergency. Approved March 7, 2008.

## **JUDICIAL DECISIONS**

### **DECISIONS UNDER PRIOR LAW**

#### **Constitutionality.**

Plaintiffs, asserting sensitivity to grass smoke, asserted that the burning of grass by seed growers constituted a trespass and a nuisance and that the immunity granted to the seed growers under a former law was unconstitutional. The supreme court dis-

agreed. The amendments did not act as an unconstitutional taking of property, and they were not an unconstitutional special and local law. *Moon v. N. Idaho Farmers Ass'n*, 140 Idaho 536, 96 P.3d 637 (2004), cert. denied, 543 U.S. 1146, 125 S. Ct. 1299, 161 L. Ed. 2d 106 (2005).

### **39-115. Pollution source permits. —**

(1)(a) The director shall have the authority to issue pollution source permits in compliance with rules established hereunder.

(b) To determine the applicability of permit requirements for any major or minor air pollution source in Idaho, the department shall develop and recommend to the board for adoption, rules that define "regulated air pollutant" as follows:

(i) For purposes of a major source permit to operate issued or modified by the department in accordance with title V of the federal clean air act amendments of 1990, "regulated air pollutant" shall have the same meaning as in title V of the federal clean air act amendments of 1990, and any applicable federal regulations promulgated pursuant to title V of the federal clean air act amendments of 1990;

(ii) For purposes of any other operating permit issued or modified by the department, the federal definition of "regulated air pollutant" as defined in subsection (1)(b)(i) of this section shall also apply;

(iii) For purposes of any permit to construct issued or modified by the department pursuant to part D of subchapter I of the federal clean air act, "regulated air pollutant" shall mean those air contaminants that are regulated pursuant to part D of subchapter I of the federal clean air act and applicable federal regulations promulgated pursuant to part D of subchapter I of the federal clean air act; and

(iv) For purposes of major source compliance with 42 U.S.C. section 7412(g) and (i)(1), "regulated air pollutant" shall mean those air contaminants that are listed pursuant to 42 U.S.C. section 7412(b); and

(v) For purposes of any other major or minor permit to construct issued or modified by the department, "regulated air pollutant" shall mean those air contaminants that are regulated pursuant to part C of subchapter I of the federal clean air act and any applicable federal regulations promulgated pursuant to part C of subchapter I of the federal clean air act.

(c) To determine the applicability of any permit to construct or permit to operate requirement to any air pollution source in Idaho, fugitive emissions shall not be included in any applicability calculation, unless required by 42 U.S.C. section 7401 et seq. or any implementing regulation promulgated thereunder. The director shall develop and the board shall adopt rules that provide that, for both major and minor source permit applicability determinations, fugitive emissions shall be included only as required by 42 U.S.C. section 7401 et seq. or any implementing regulation promulgated thereunder.

(d) The director shall develop and recommend to the board for adoption through rulemaking, criteria to determine insignificant activities and such sources or modification with emissions at or below the de minimis level which shall not require either a permit to construct or a permit to operate; provided however, that a registration of the activities or sources may be required.

(2) The director shall have the authority to sue in competent courts to enjoin any threatened or continuing:

(a) Violations of pollution source permits or conditions thereof without the necessity of a prior revocation of the permit; or

(b) Construction of an industrial or commercial air pollution source without a permit required under this chapter or rules adopted hereunder.

(3) The department is authorized to charge and collect a fee for processing applications for industrial or commercial air pollution source permits in accordance with a fee schedule established by the board pursuant to this chapter. For fees charged for operating permits under title V of the federal clean air act amendments of 1990, the department shall not charge a fee on any hazardous air pollutant other than those listed under section 112 of the federal clean air act. The fee schedule shall be structured to provide an incentive for emission reduction.

(4) The director may issue air emission source permits to construct a facility to incinerate any waste or waste item contaminated with polychlorinated biphenyls (PCBs) only if the director finds:

(a) The facility will not be sited in complex valley terrain where the valley floor is less than five (5) miles wide and the valley walls rise more than one thousand (1,000) feet;

(b) The facility has complied with local planning and zoning requirements;

(c) There has been an opportunity for public participation; and

(d) The facility will employ best available technology and instrumentation.

Subsection (4) of this section shall not apply to incineration activities existing on or before January 1, 1987.

#### **History.**

I.C., § 39-115, as added by 1973, ch. 138, § 1, p. 269; am. 1974, ch. 23, § 56, p. 633; am. 1987, ch. 135, § 1, p. 269; am. 1987, ch. 198,

§ 2, p. 411; am. 1993, ch. 275, § 6, p. 926; am. 2000, ch. 132, § 23, p. 309; am. 2005, ch. 292, § 2, p. 929; am. 2005, ch. 324, § 1, p. 994.



## STATUTORY NOTES

**Prior Laws.**

Former § 39-115 was repealed. See Prior Laws, § 39-101.

**Legislative Intent.**

Section 1 of S.L. 2005, ch. 292 provided "Statement of Legislative Intent. The definition of 'regulated air pollutant' for purposes of determining whether permit to construct or permit to operate requirements apply, was intended to comply with but not exceed federal clean air act requirements. The Legislature intends that the Department of Environmental Quality uniformly apply Idaho law in an effort to conform with but not differ from federal definitions of regulated air pollutants. Nevertheless, the United States District Court for Idaho has applied portions of rules of the Department of Environmental Quality for air pollution in a manner which substantially exceeds federal requirements. This act is meant to clarify that Idaho law in this regard has always been intended to comply with but not exceed federal law and should not be construed as a change in the law, but rather a clarification of what the existing law has consistently meant."

**Federal References.**

Title V of the federal clean air act, referred to in subdivision (1)(b)(i) and subsection (3), is compiled as 42 USCS § 7661 et seq.

Part D of subchapter I of the federal clean air act, referred to in subdivision (1)(b)(iii), is codified as 42 USCS § 7501 et seq.

Part C of subchapter I of the federal clean air act, referred to in subdivision (1)(b)(v), is codified as 42 USCS § 7470 et seq.

Section 112 of the federal clean air act, referred to in subsection (3), is compiled as 42 USCS § 7412 et seq.

**Compiler's Notes.**

Section 2 of S.L. 1973, ch. 138 read: "The provisions of this act are hereby declared to be severable and if any provisions of this act or the application of such provisions to any person or circumstances is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

The letters "PCBs" enclosed in parentheses so appeared in the law as enacted.

**Effective Dates.**

Section 3 of S.L. 1973, ch. 138 declared an emergency. Approved March 15, 1973.

Section 3 of S.L. 1987, ch. 198 declared an emergency. Approved March 31, 1987.

Section 39 of S.L. 2000, ch. 132 provides: "(1) This act shall be in full force and effect on and after July 1, 2000, except that the Division of Environmental Quality shall have one (1) year thereafter to accomplish necessary changes to complete the physical transition to the new department.

"(2) Notwithstanding any other provisions of Chapter 52, Title 67, Idaho Code, the Administrative Rules Coordinator shall redesignate all references to the Division of Environmental Quality which appear in the master rule database maintained by the coordinator, to the Department of Environmental Quality without further republication or promulgation, to comply with the provisions of this act. Until such time as a republication of a rule occurs, any reference in a rule to the Division of Environmental Quality shall mean the Department of Environmental Quality."

**39-116. Compliance schedules.** — The director shall have the authority to issue compliance schedule orders to any person who is the source of any health hazard, air contaminant, water pollution or solid waste for which regulatory standards have been established, including regulatory standards then in effect or to become effective at a future date or at future successive dates. The purpose of any compliance schedule order shall be to identify and establish appropriate acts and time schedules for interim actions by those persons who are or who will be affected by regulatory standards, such acts and schedules being designed to assure timely compliance by those affected by the regulatory standards. Prior to the issuance of a compliance schedule order, the director shall solicit the cooperation of the person to whom the compliance schedule order will be directed by providing the person notice that identifies with reasonable specificity the applicable statutes and rules, the events or occurrences that necessitate the order, and the proposed terms of the order and that informs the person that a conference with the director to discuss the proposed terms of the order shall be provided if requested within fifteen (15) days of receipt of the notice. If requested, the director shall confer with the person and shall solicit the person's cooperation in the



selection of the terms of the order. The compliance schedule order may be issued at any time after the conference, if one is requested, and the expiration of sixty (60) days following the receipt of the notice. Any compliance schedule order shall be enforceable in the same manner as any order entered pursuant to section 39-108, Idaho Code, except the order may be challenged by an administrative appeal to the board as provided in section 39-107(5), Idaho Code. The order shall be effective and enforceable during an administrative appeal, unless the board or its designated hearing officer issues a stay of the order.

#### History.

I.C., § 39-116, as added by 1973, ch. 139, § 1, p. 270; am. 1974, ch. 23, § 57, p. 633; am.

1986, ch. 60, § 7, p. 169; am. 2000, ch. 132, § 24, p. 309.

### STATUTORY NOTES

#### Prior Laws.

Former § 39-116 was repealed. See Prior Laws, § 39-101.

#### Effective Dates.

Section 2 of S.L. 1973, ch. 139 declared an emergency. Approved March 15, 1973.

Section 39 of S.L. 2000, ch. 132 provides: “(1) This act shall be in full force and effect on and after July 1, 2000, except that the Division of Environmental Quality shall have one (1) year thereafter to accomplish necessary changes to complete the physical transition to the new department.

“(2) Notwithstanding any other provisions of Chapter 52, Title 67, Idaho Code, the Administrative Rules Coordinator shall redesignate all references to the Division of Environmental Quality which appear in the master rule database maintained by the coordinator, to the Department of Environmental Quality without further republication or promulgation, to comply with the provisions of this act. Until such time as a republication of a rule occurs, any reference in a rule to the Division of Environmental Quality shall mean the Department of Environmental Quality.”

**39-116A. Compliance agreement schedules.** — (1) The director is hereby authorized to enter into a compliance agreement schedule with any person. An agreement entered into under this section shall not relieve any person from the obligation to comply with applicable human health and environmental protection statutes and rules, but may include an enforceable schedule for actions necessary for the person to come into or maintain compliance as expeditiously as practicable with such statutes and rules, if the person demonstrates to the satisfaction of the department that such a schedule is appropriate, given the factors listed in subsection (4) of this section. The provisions of this section shall not apply where prohibited by federal or state law.

(2) The department may propose, and the board adopt, rules necessary for the implementation of this section.

(3) In establishing any compliance agreement schedule, the term of the agreement shall not exceed ten (10) years, although successive agreements may be entered into. Agreements shall provide for annual meetings between the department and the person to reassess whether, considering the factors listed in subsection (4) of this section, the schedule and other terms of the agreement are still appropriate. All agreements must be signed by the director or his designee and an authorized representative on behalf of the person. All agreements are enforceable as orders under the provisions of this chapter.

(4) Agreements and schedules entered into under this act shall take into account, in descending priority the:

- (a) Protection of public health;
- (b) Protection of environment;
- (c) Ability of the person to pay for costs of compliance;
- (d) Current fiscal obligations of the person;
- (e) Other factors as determined by the department or the board.

**History.**

I.C., § 39-116A, as added by 2003, ch. 317,  
§ 1, p. 869.

**STATUTORY NOTES****Compiler's Notes.**

The term "this act" in subsection (4) refers to S.L. 2003, ch. 317, which is codified as this section.

**Effective Dates.**

Section 2 of S.L. 2003, ch. 317 declared an emergency. Approved April 24, 2003.

**39-116B. Vehicle inspection and maintenance program.** — (1) The board shall initiate rulemaking to provide for the implementation of a motor vehicle inspection and maintenance program to regulate and ensure control of the air pollutants and emissions from registered motor vehicles in an attainment or unclassified area as designated by the United States environmental protection agency, not otherwise exempted in subsection (7) of this section, if the director determines the following conditions are met:

- (a) An airshed, as defined by the department, within a metropolitan statistical area, as defined by the United States office of management and budget, has ambient concentration design values equal to or above eighty-five percent (85%) of a national ambient air quality standard, as defined by the United States environmental protection agency, for three (3) consecutive years starting with the 2005 design value; and
- (b) The department determines air pollutants from motor vehicles constitute one (1) of the top two (2) emission sources contributing to the design value of eighty-five percent (85%).

(2) In the event both of the conditions in subsection (1) of this section are met, the board shall establish by rule minimum standards for an inspection and maintenance program for registered motor vehicles, not otherwise exempted in subsection (7) of this section, which shall provide for:

- (a) Counties and cities within the airshed that will be subject to the motor vehicle inspection and maintenance program;
- (b) The requirements for licensing authorized inspection stations and technicians;
- (c) The frequency with which inspections shall be required, provided that inspections shall occur no more than once every two (2) years;
- (d) The procedures under which authorized inspection stations and technicians inspect motor vehicles and issue evidence of compliance;
- (e) The criteria under which it is to be determined that a motor vehicle is eligible for a certificate of compliance;
- (f) The parameters and diagnostic equipment necessary to perform the required inspection. The rules shall ensure that the equipment complies with any applicable standards of the United States environmental protection agency;



(g) A fee, bond or insurance which is necessary to carry out the provisions of this section and to fund an air quality public awareness and outreach program. The fee for a motor vehicle inspection shall not exceed twenty dollars (\$20.00) per vehicle;

(h) The issuance of a pamphlet for distribution to owners of motor vehicles explaining the reasons for and the methods of the inspections; and

(i) The granting of a waiver from the minimum standards as provided by rule, which may be based on model year, fuel, size, or other factors.

(3) In the event both of the conditions in subsection (1) of this section are met, the director shall attempt to enter into a joint exercise of powers agreement under sections 67-2326 through 67-2333, Idaho Code, with the board of county commissioners of each county within the airshed in which a motor vehicle inspection and maintenance program is required under this section, and the councils of incorporated cities within those counties, to develop a standardized inspection and maintenance program. If the board of county commissioners or the councils of incorporated cities within those counties choose not to enter into a joint exercise of powers agreement with the director, then within one hundred twenty (120) days of the director's written request to enter into such an agreement, the board of county commissioners or the councils of incorporated cities may notify the department that it will implement an alternative motor vehicle emission control strategy that will result in emissions reductions equivalent to that of a vehicle emission inspection program. If the department determines the emissions reductions of the alternative motor vehicle emission control strategy are not equivalent, or no equivalent reductions are proposed, the department or its designee shall implement the motor vehicle inspection and maintenance program required pursuant to the provisions of this section.

(4) The Idaho transportation department shall revoke the registration of any motor vehicle identified by the department or its designee, or any city or county administering a program established under the provisions of this section as having failed to comply with such motor vehicle inspection and maintenance program, except that no vehicle shall be identified to the Idaho transportation department unless:

(a) The department or its designee, or the city or county certifies to the Idaho transportation department that the owner of the motor vehicle has been given notice and had the opportunity for a hearing concerning the program and has exhausted all remedies and appeals from any determination made at such hearing; and

(b) The department or its designee, or the city or county reimburses the Idaho transportation department for all direct costs associated with the registration revocation procedure.

Any vehicle registration that has been revoked pursuant to the provisions of this section that is found to be in compliance with current emissions standards shall have the registration reinstated without charge.

(5) The department shall annually review the results of the vehicle inspection and maintenance program. The review shall include, among other things, an estimate of the emission reduction obtained from the



number of vehicles that initially fail the test and then pass after maintenance.

(6) Every five (5) years beginning with the implementation of the program, the director shall review the air quality data and determine whether a program initially established pursuant to the provisions of this section should be continued, modified or terminated.

(7) Electric or hybrid motor vehicles, new motor vehicles less than five (5) years old, classic automobiles, motorized farm equipment and registered motor vehicles engaged solely in the business of agriculture, shall be exempt from any motor vehicle inspection and maintenance program established pursuant to the provisions of this section.

**History.**

I.C., § 39-116B, as added by 2008, ch. 368,  
§ 1, p. 1007; am. 2011, ch. 329, § 1, p. 964.

**STATUTORY NOTES**

**Cross References.**

Transportation department, § 40-501 et seq.

**Effective Dates.**

Section 2 of S.L. 2011, ch. 329 declared an emergency. Approved April 14, 2011.

**Amendments.**

The 2011 amendment, by ch. 329, added the last sentence in subsection (4).

**39-117. Criminal violation — Penalty.** — (1) Any person who willfully or negligently violates any of the provisions of the non-air quality public health or environmental protection laws or the terms of any lawful notice, order, permit, standard, rule or regulation issued pursuant thereto, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than ten thousand dollars (\$10,000) for each separate violation or one thousand dollars (\$1,000) per day for continuing violations, whichever is greater.

(2) Any person who knowingly violates any of the provisions of the air quality public health or environmental protection laws or the terms of any lawful notice, order, permit, standard or rule issued pursuant thereto shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not more than ten thousand dollars (\$10,000) per day per violation. In addition, any person who knowingly releases into the ambient air any hazardous air pollutant listed pursuant to section 112 of the federal clean air act 42 USC 7412, or any extremely hazardous substance listed pursuant to 42 USC 11002(a)(2) that is not listed under section 112, and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine of not more than two hundred fifty thousand dollars (\$250,000) per day, or by imprisonment of not more than fifteen (15) years or both such fine and imprisonment. Any person committing such violation which is an organization, shall, upon conviction under this subsection, be subject to a fine of not more than one million dollars (\$1,000,000) for each violation. For any air pollutant for which the environmental protection agency or the board of health and welfare [board of environmental quality] has set an

emissions standard or for any source for which a permit has been issued under title V of the clean air act amendments of 1990, a release of such pollutant in accordance with that standard or permit shall not constitute a violation of the provisions of this subsection.

**History.**

I.C., § 39-117, as added by 1973, ch. 137, § 1, p. 268; am. 1986, ch. 60, § 8, p. 169; am.

1993, ch. 275, § 7, p. 926; am. 1998, ch. 125, § 3, p. 461.

**STATUTORY NOTES****Prior Laws.**

Former § 39-117 was repealed. See Prior Laws, § 39-101.

**Federal References.**

Title V of the federal clean air act, referred to in subsection (2), is compiled as 42 USCS § 7661 et seq.

**Compiler's Notes.**

The bracketed insertion in subsection (2)

was added by the compiler to reflect the transfer of certain powers and duties from the board of health and welfare to the board of environmental quality. See § 39-107.

**Effective Dates.**

Section 2 of S.L. 1973, ch. 137 declared an emergency. Approved March 15, 1973.

Section 5 of S.L. 1998, ch. 125 declared an emergency. Approved March 19, 1998.

**39-118. Review of plans.** — (1) Except as provided by subsection (2) of this section, all plans and specifications for the construction of new sewage systems, sewage treatment plants or systems, other waste treatment or disposal facilities, public water supply systems or public water treatment systems or for material modification or expansion to existing sewage treatment plants or systems, waste treatment or disposal facilities, public water supply systems or public water treatment systems, shall be submitted to and approved by the director before construction may begin, and all construction shall be in substantial compliance therewith. Material modifications are those that are intended to increase system capacity or to alter the methods or processes employed. The director shall review plans and specifications and endeavor to resolve design issues within forty-two (42) days of submittal such that approval can be granted. If the director and applicant have not resolved design issues within forty-two (42) days or at any time thereafter, the applicant may file a written demand to the director for a decision. Upon receipt of such written demand, the director shall deliver a written decision to the applicant within no more than seven (7) days explaining any reasons for disapproval. The director shall maintain records of all written demands for decision made pursuant to this subsection with such records including the final decision rendered and the timeliness thereof. No material deviation shall be made from the approved plans and specifications without the prior approval of the director.

(2) Plans meeting the following standards shall not require preconstruction approval by the director:

(a) Plans for dairy systems pursuant to section 37-401, Idaho Code.

(b) Plans developed to evidence compliance with storm water best management practices.

(c) Plans developed for routine maintenance or equipment replacement activities.

(d) Plans for sanitary sewer extensions, water main extensions, and storm drain extensions, when such facilities will be owned and operated



by a city, county, quasi-municipal corporation or regulated public utility where such city, county, quasi-municipal corporation or regulated public utility provides for the review of such plans and specifications by a qualified licensed professional engineer to verify compliance with facility standards and approves construction plans prior to initiation of construction. Any plans approved pursuant to this subsection shall be transmitted to the director at the time construction is authorized along with a statement that the plans comply with the facility standards and that construction has been authorized by the public agency or public utility. At the discretion of any city, county, quasi-municipal corporation or regulated public utility, the plans addressed by this subsection may be referred to the director for review and approval prior to initiation of construction.

(3) Within thirty (30) days of the completion of construction of facilities for which plans are required to be reviewed pursuant to subsection (1) or subsection (2)(d) of this section, record plans and specifications based on information provided by the construction contractor and field observations made by the engineer or the engineer's designee depicting the actual construction of facilities performed must be submitted to the director by the engineer representing the public agency or regulated public utility, if the resultant facilities will be owned and operated by a public agency or regulated public utility, or by the design engineer or owner-designated substitute engineer if the constructed facilities will not be owned and operated by a public agency or regulated public utility. Such submittal by the professional engineer must confirm material compliance with the approved plans or disclose any material deviations therefrom. If construction does not materially deviate from the original plans and specifications previously provided to the department, the owner may have a statement to that effect prepared by a licensed professional engineer and filed with the department in lieu of submitting a complete and accurate set of record drawings.

(4) All plans and specifications submitted to satisfy the requirements of subsection (1) of this section and all plans approved pursuant to subsection (2)(d) of this section shall be in compliance with applicable facility and design standards and conform in style and quality to regularly accepted engineering standards. The department shall review plans to determine compliance with applicable facility standards and engineering standards of care. As long as the plans and specifications comply with applicable facility and design standards, the department shall not substitute its judgment for that of the owner's design engineer concerning the manner of compliance with design standards. Except with respect to plans and specifications for facilities addressed in subsection (5) of this section, and confined animal feeding operations, the board may require that certain types of plans and specifications must be stamped by registered professional engineers. If the director determines that any particular facility or category of facilities will produce no significant impact on the environment or on the public health, the director shall be authorized to waive the submittal or approval requirement for that facility or category of facilities.

(5) All plans and specifications for the construction, modification, expansion, or alteration of waste treatment or disposal facilities for aquaculture



facilities licensed by the department of agriculture for both commercial fish propagation facilities as defined in section 22-4601, Idaho Code, and sport fish propagation facilities whether private or operated or licensed by the department of fish and game and other aquaculture facilities as defined in the Idaho waste management guidelines for aquaculture operations, shall be submitted to and approved by the director of the department of environmental quality before construction may begin and all construction shall be in compliance therewith. The director shall review plans and specifications within forty-five (45) days of submittal and notify the owner or responsible party of approval or disapproval. In the event of disapproval the director shall provide reasons for disapproval in writing to the owner or responsible party. Plans and specifications shall conform in style and quality to standard industry practices and guidelines developed pursuant to this subsection. The director shall establish industry guidelines or best management practices subcommittees composed of members of the department, specific regulatory agencies for the industry, general public, and persons involved in the industry to develop and update guidelines or best management practices as needed. Within thirty (30) days of the completion of the construction, modification, expansion or alteration of facilities subject to this subsection, the owner or responsible party shall submit a statement to the director that the construction has been completed and is in substantial compliance with the plans and specifications as submitted and approved. The director shall conduct an inspection within sixty (60) days of the date of submission of the statement and shall inform the owner or responsible party of its approval of the construction or in the event of nonapproval, the reasons for nonapproval.

#### History.

I.C., § 39-118, as added by 1973, ch. 136, § 1, p. 267; am. 1974, ch. 23, § 58, p. 633; am. 1976, ch. 116, § 1, p. 453; am. 1986, ch. 60,

§ 9, p. 169; am. 1994, ch. 290, § 1, p. 910; am. 1996, ch. 80, § 1, p. 262; am. 2000, ch. 132, § 25, p. 309; am. 2005, ch. 321, § 1, p. 988.

### STATUTORY NOTES

#### Prior Laws.

Former § 39-118 was repealed. See Prior Laws, § 39-101.

#### Compiler's Notes.

Section 2 of S.L. 2005, ch. 321 provided "The Director of the Department of Environmental Quality shall appoint a committee of licensed professional engineers who are regularly engaged in the design of facilities regulated by Section 39-118(1), Idaho Code, to assist the Department of Environmental Quality in establishing facility standards and design standards for such facilities. Such standards shall be adopted no later than June 30, 2006."

#### Effective Dates.

Section 2 of S.L. 1973, ch. 136 declared an emergency. Approved March 15, 1973.

Section 182 of S.L. 1974, ch. 23 provided the act should be in full force and effect on and after July 1, 1974.

Section 2 of S.L. 1976, ch. 116 declared an emergency. Approved March 16, 1976.

Section 2 of S.L. 1996, ch. 80 declared an emergency. Approved March 6, 1996.

Section 39 of S.L. 2000, ch. 132 provides:

"(1) This act shall be in full force and effect on and after July 1, 2000, except that the Division of Environmental Quality shall have one (1) year thereafter to accomplish necessary changes to complete the physical transition to the new department.

"(2) Notwithstanding any other provisions of Chapter 52, Title 67, Idaho Code, the Administrative Rules Coordinator shall redesignate all references to the Division of Environmental Quality which appear in the master rule database maintained by the coordinator, to the Department of Environmental Quality without further republication or promulgation, to comply with the provisions of this act. Until such time as a republication of a rule occurs, any reference in a rule to the Division of Environmental Quality shall mean the Department of Environmental Quality."

## JUDICIAL DECISIONS

**Denial of Permit.**

Where homeowners failed to show that they would suffer any additional burden by connecting onto privately owned sewer line than the burden they would bear if required to connect to a publicly owned sewer line, the district board of health could deny the

homeowners' permits to construct a filtration system on their property on the grounds that a superior sewer collection system was reasonably available. *Lindstrom v. District Bd. of Health*, 109 Idaho 956, 712 P.2d 657 (Ct. App. 1985).

**39-118A. Ore processing by cyanidation.** — (1) All plans and specifications for the construction of a cyanidation facility shall be submitted to and approved by the department before construction may begin, and all construction shall be in compliance therewith. Within thirty (30) days of the completion of such construction, modification or expansion, complete and accurate plans and specifications depicting that actual construction, modification or expansion does not deviate from the original approved plans and specifications, shall be submitted to the department. All plans and specifications submitted to satisfy the requirements of this section shall be certified by registered professional engineers.

(2)(a) A cyanidation facility shall not be constructed, operated, or closed prior to a permit being obtained from the department.

(b) Weather permitting, the director shall deliver to the operator within one hundred eighty (180) days after the receipt of a complete permit application the notice of rejection or notice of approval of the permit, as the case may be, provided however, that, subject to the provisions of subsection (3) of this section, if the director fails to deliver a notice of approval or notice of rejection within the time period, the permit submitted shall be deemed to comply with this chapter, and the operator may commence to build, operate or close the cyanidation facility covered by the permit, as the case may be, as if a notice of approval of the permit had been received from the director. Provided however, that if weather conditions prevent the director from inspecting the cyanidation facility to obtain information needed to approve or reject a submitted permit, he may, in writing to the operator, extend the time not to exceed thirty (30) days after weather conditions permit such inspection.

(c) The director may require a reasonable fee for processing permit applications.

(3)(a) Prior to the effective date of rules promulgated under chapter 15, title 47, Idaho Code, the department is authorized to issue a permit under subsection (2) of this section if the cyanidation facility has provided financial assurance under the provisions of IDAPA 58.01.13 in an amount determined by the department to be the estimated reasonable costs to complete the activities specified in the permanent closure plan required in IDAPA 58.01.13, in the event of the failure of an operator to complete those activities, plus ten percent (10%) of such costs. In setting the amount of financial assurance, the department shall avoid duplication with any financial assurance, bonds and sureties deposited with other governmental agencies.

(b) After the effective date of rules promulgated under chapter 15, title 47, Idaho Code, the department shall not issue a permit under subsection



(2) of this section unless the cyanidation facility has satisfied the financial assurance requirements of chapter 15, title 47, Idaho Code, relating to ore processing by cyanidation.

(4) A cyanidation facility with an existing permit approved by the department prior to July 1, 2005, shall be subject to the applicable laws and rules for ore processing by cyanidation in effect on June 30, 2005. If there is a material modification or a material expansion of a cyanidation facility after June 30, 2005, all provisions of this chapter shall apply to the modification or expansion; provided however, that reclamation or closure related activities at a facility with an existing cyanidation permit approved by the department that did not actively add cyanide after January 1, 2005, shall not be considered to be material modifications or a material expansion of the facility.

(5) The department shall promulgate temporary rules by August 1, 2005, to implement the provisions of this act; however, no rulemaking is necessary, nor shall be required, to increase the amount of financial assurance provided by the department's interim authority under subsection (3)(a) of this section.

#### History.

I.C., § 39-118A, as added by 1987, ch. 356,  
§ 1, p. 789; am. 2005, ch. 167, § 2, p. 509.

#### STATUTORY NOTES

##### Compiler's Notes.

The term "this act" in subsection (5) refers to S.L. 2005, ch. 167, which is codified as §§ 39-103, 39-118A, 42-202B, 47-1501 to 47-1503, 47-1505 to 47-1508, 47-1512 to 47-1514, 47-1517, and 47-1518.

##### Effective Dates.

Section 2 of S.L. 1987, ch. 356 declared an emergency. Approved April 6, 1987.

**39-118B. Relationship to federal law.** — The board may promulgate rules and regulations to ensure that the state of Idaho is in compliance with the provisions of the federal clean air act. To the extent that the federal clean air act sets forth or the United States environmental protection agency adopts or has adopted a specific standard, emission limitation or control technology requirement under the clean air act, a more stringent standard, emission limitation or control technology requirement promulgated by the board shall not become effective until specifically approved by statute.

#### History.

I.C., § 39-118B, as added by 1993, ch. 275,  
§ 1, p. 926.

#### STATUTORY NOTES

##### Federal References.

The federal clean air act, referred to in this

section, is compiled as 42 USCS § 7401 et seq.

**39-118C. Legislative findings and declaration of purpose.** —

(1) The legislature finds that it is an obligation of the state of Idaho under



title V of the clean air act to provide for an operating permit program for sources of air pollution within the state.

(2) The purpose of these amendments to the environmental protection and health act is to meet the state's obligation to protect air quality with a cost-effective operating permit program.

(3) The legislature intends that the department's regulation under title V of the clean air act shall take advantage of the flexibility authorized by the federal clean air act to establish reasonable and cost-effective requirements. Such requirements shall include, but not be limited to:

- (a) Operating flexibility provisions;
- (b) Provisions allowing off-permit changes;
- (c) Provisions that limit federally enforceable hazardous air pollutant requirements to that group of pollutants listed under section 112 of the federal clean air act (to the extent that the operating permits address hazardous air pollutants);
- (d) Provisions for operating permits to be issued for fixed terms of five (5) years; provided that, in order to facilitate the implementation of the title V operating permit program, the director may issue operating permits with terms of from three (3) to five (5) years during the first three (3) years following environmental protection agency approval of Idaho's title V operating permit program so long as those permits with fixed terms of less than five (5) years are renewed with terms of five (5) years thereafter; and provided further that if the maximum operating permit term under the federal clean air act should be extended beyond five (5) years, the director shall similarly extend the term of operating permits issued under the Idaho program; and provided further, that shorter terms are allowable when mutually agreed upon by the department and the applicant;
- (e) Provisions for adequate, streamlined and reasonable procedures for processing modifications, including establishing criteria to determine insignificant changes that shall not require a permit modification, and establishing classes of modifications based on significance which shall include a minor modification class for which modifications may be processed in group as authorized by 40 CFR 70.7(e)(3) as may be amended; and
- (f) Provisions allowing an existing source to make changes that reduce emissions without applying for a permit to construct or an amendment to an operating permit; provided, however, that an existing source that makes such changes may seek and obtain an operating permit modification if it chooses.

#### **History.**

I.C., § 39-118C, as added by 1993, ch. 275,  
§ 2, p. 926.

#### **STATUTORY NOTES**

##### **Prior Laws.**

Former § 39-118C, which comprised I.C., § 39-118C, as added by 1991, ch. 229, § 1, p. 548, was repealed by S.L. 1992, ch. 189, § 4.

##### **Federal References.**

Title V of the federal clean air act, referred to in this section, is compiled as 42 USCS § 7661 et seq.

Section 112 of the federal clean air act, referred to in this section, is compiled as 42 USCS § 7412 et seq.

**Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

**39-118D. Idaho air quality permitting fund.** — (1) All moneys received from fees collected from the pollution sources requiring permitting under title V of the federal clean air act amendments of 1990 shall be forwarded to the department of environmental quality and shall be paid into the Idaho air quality permitting fund which is hereby created in the office of the state treasurer.

(2) Such moneys and all interest earned thereon shall be kept in the Idaho air quality permitting fund and shall be expended for the technical, legal and administrative support necessary for implementing the operating permit program required under title V of the federal clean air act amendments of 1990.

(3) All salaries, costs and expenses incurred by the department of environmental quality in performing the duties and the exercise of its powers in carrying out the operating permit program required under title V of the federal clean air act amendments of 1990 shall be paid out of the air quality permitting fund.

**History.**

I.C., § 39-118D, as added by 1993, ch. 275, § 3, p. 926; am. 2000, ch. 132, § 26, p. 309.

**STATUTORY NOTES**

**Cross References.**

State treasurer, § 67-1201 et seq.

**Federal References.**

Title V of the federal clean air act, referred to in this section, is compiled as 42 USCS § 7661 et seq.

**Effective Dates.**

Section 39 of S.L. 2000, ch. 132 provides: "(1) This act shall be in full force and effect on and after July 1, 2000, except that the Division of Environmental Quality shall have one (1) year thereafter to accomplish necessary changes to complete the physical transition to the new department.

"(2) Notwithstanding any other provisions of Chapter 52, Title 67, Idaho Code, the Administrative Rules Coordinator shall redesignate all references to the Division of Environmental Quality which appear in the master rule database maintained by the coordinator, to the Department of Environmental Quality without further republication or promulgation, to comply with the provisions of this act. Until such time as a republication of a rule occurs, any reference in a rule to the Division of Environmental Quality shall mean the Department of Environmental Quality."

**39-118E. Small business assistance.** — The department shall implement a small business assistance program as required in 42 U.S.C. 7661A [7661a].

**History.**

I.C., § 39-118E, as added by 1993, ch. 275, § 8, p. 926.

**STATUTORY NOTES**

**Federal References.**

The bracketed insertion was added by the compiler to correct the federal citation. The

small business assistance program referenced to in this section is probably the small business stationary source technical and environ-

mental compliance assistance program mandated by 42 USCS § 7661f.

**39-119. Collection of fees for services.** — The department of environmental quality is hereby authorized to charge and collect reasonable fees, established by standards formulated by the director and approved by the board through rulemaking, for any service rendered by the department.

**History.**

I.C., § 39-119, as added by 1975, ch. 182, § 1, p. 499; am. 2000, ch. 132, § 27, p. 309.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-119 was repealed. See Prior Laws, § 39-101.

**Effective Dates.**

Section 2 of S.L. 1975, ch. 182 declared an emergency. Approved March 27, 1975.

Section 39 of S.L. 2000, ch. 132 provides: “(1) This act shall be in full force and effect on and after July 1, 2000, except that the Division of Environmental Quality shall have one (1) year thereafter to accomplish necessary changes to complete the physical transition to the new department.

“(2) Notwithstanding any other provisions of Chapter 52, Title 67, Idaho Code, the Administrative Rules Coordinator shall redesignate all references to the Division of Environmental Quality which appear in the master rule database maintained by the coordinator, to the Department of Environmental Quality without further republication or promulgation, to comply with the provisions of this act. Until such time as a republication of a rule occurs, any reference in a rule to the Division of Environmental Quality shall mean the Department of Environmental Quality.”

**39-120. Department of environmental quality primary administrative agency — Agency responsibilities.** — (1) The department of environmental quality is designated as the primary agency to coordinate and administer ground water quality protection programs for the state.

(2) Recognizing that the department of water resources has the responsibility to maintain the natural resource geographic information system for the state and is the collector of baseline data for the state's water resources, that the department of environmental quality has the responsibility for collecting and monitoring data for water quality management purposes and that the department of agriculture is responsible for regulating the use of pesticides and fertilizers and for licensing applicators, the department of environmental quality, the department of water resources and the department of agriculture shall:

(a) Develop a ground water monitoring plan, concurrently with the development of a ground water quality plan, for development and administration of a comprehensive ground water quality monitoring network, including point of use, point of contamination and problem assessment monitoring sites across the state and the assessment of ambient ground water quality utilizing, to the greatest degree possible, collection and coordination of existing data sources.

(b) Establish a system or systems within state departments and political subdivisions of the state for collecting, evaluating and disseminating ground water quality data and information.

(c) Develop and maintain a natural resource geographic information system and comprehensive water resource data system. The system shall be accessible to the public.



(3) The responsible state departments or boards should adopt rules which specify the general standards for determining actions necessary to prevent ground water contamination and cleanup actions necessary to meet the goals of the state.

(4) The director of the department of environmental quality may develop and recommend for approval by the board through rulemaking, ambient ground water quality standards for contaminants for which the administrator of the United States environmental protection agency has established drinking water maximum contaminant levels. The director may develop and recommend for approval by the board, through rulemaking, ground water quality standards for contaminants for which the administrator of the United States environmental protection agency has not established drinking water maximum contaminant levels. However, the existence of such standards, or the lack of them, should not be construed or utilized in derogation of the ground water quality protection goal and protection policies of the state.

(5) The departments of environmental quality, water resources and agriculture should take actions necessary to promote and assure public confidence and public awareness of ground water quality protection. In pursuing this goal, the departments and public health districts should make public the results of investigations concerning ground water quality subject to the restrictions contained in section 39-111, Idaho Code.

**History.**

I.C., § 39-120, as added by 1989, ch. 421,

§ 2, p. 1027; am. 1990, ch. 151, § 1, p. 334; am. 2000, ch. 132, § 28, p. 309.

**STATUTORY NOTES**

**Cross References.**

Department of agriculture, § 22-101 et seq.

Department of water resources, § 42-1701 et seq.

**Prior Laws.**

Former § 39-120 was repealed. See Prior Laws, § 39-101.

**Effective Dates.**

Section 39 of S.L. 2000, ch. 132 provides: “(1) This act shall be in full force and effect on and after July 1, 2000, except that the Division of Environmental Quality shall have one (1) year thereafter to accomplish necessary

changes to complete the physical transition to the new department.

“(2) Notwithstanding any other provisions of Chapter 52, Title 67, Idaho Code, the Administrative Rules Coordinator shall redesignate all references to the Division of Environmental Quality which appear in the master rule database maintained by the coordinator, to the Department of Environmental Quality without further republication or promulgation, to comply with the provisions of this act. Until such time as a republication of a rule occurs, any reference in a rule to the Division of Environmental Quality shall mean the Department of Environmental Quality.”

**39-121. Definitions.** — As used in section 39-102, Idaho Code, and in sections 39-120 through 39-127, Idaho Code:

(1) “Cleanup” means removal, treatment or isolation of a contaminant from ground water through the directed efforts of humans or the removal or treatment of a contaminant in ground water through management practice or the construction of barriers, trenches and other similar facilities for prevention of contamination, as well as the use of natural processes such as ground water recharge, natural decay and chemical or biological decomposition.

(2) “Contaminant” means any chemical, ion, radionuclide, synthetic or-

ganic compound, microorganism, waste or other substance which does not occur naturally in ground water or which naturally occurs at a lower concentration.

(3) "Contamination" means the direct or indirect introduction into ground water of any contaminant caused in whole or in part by human activities.

(4) "Ground water" means any water of the state which occurs beneath the surface of the earth in a saturated geological formation of rock or soil.

(5) "Ground water quality plan" or "ground water quality protection plan" means the Idaho ground water quality plan adopted by the legislature in section 1, chapter 310, laws of 1992, and in section 1, chapter 273, laws of 1995.

#### **History.**

I.C., § 39-121, as added by 1989, ch. 421,  
§ 2, p. 1027; am. 2000, ch. 132, § 29, p. 309.

#### **STATUTORY NOTES**

##### **Prior Laws.**

Former § 39-121 was repealed. See Prior Laws, § 39-101.

##### **Effective Dates.**

Section 39 of S.L. 2000, ch. 132 provides:  
"(1) This act shall be in full force and effect on and after July 1, 2000, except that the Division of Environmental Quality shall have one (1) year thereafter to accomplish necessary changes to complete the physical transition to the new department.

"(2) Notwithstanding any other provisions of Chapter 52, Title 67, Idaho Code, the Ad-

ministrative Rules Coordinator shall redesignate all references to the Division of Environmental Quality which appear in the master rule database maintained by the coordinator, to the Department of Environmental Quality without further republication or promulgation, to comply with the provisions of this act. Until such time as a republication of a rule occurs, any reference in a rule to the Division of Environmental Quality shall mean the Department of Environmental Quality."

### **39-122, 39-123. Ground water quality council created; completion of ground water quality plan. [Repealed.]**

#### **STATUTORY NOTES**

##### **Prior Laws.**

Other former §§ 39-122 and 39-123 were repealed. See Prior Laws, § 39-101.

##### **Compiler's Notes.**

The following sections were repealed by S.L. 2000, ch. 132, § 30, effective July 1, 2000:

39-122, which comprised I.C., § 39-122, as added by 1989, ch. 421, § 2, p. 1027.

39-123, which comprised I.C., § 39-123, as added by 1989, ch. 421, § 2, p. 1027; am. 1990, ch. 151, § 2, p. 334.

### **39-124. Legislative findings — Intent. [Null and void.]**

#### **STATUTORY NOTES**

##### **Prior Laws.**

Former § 39-124, which comprised I.C., § 39-124, as added by 1989, ch. 421, § 2, p. 1027, was repealed by S.L. 2000, ch. 132, § 30, effective July 1, 2000.

##### **Compiler's Notes.**

This section, which comprised S.L. 2006, ch. 367, § 1, became null and void on April 7, 2008, two years after it became effective.

**39-125. Moratorium on construction of certain coal fired power plants — Report. [Null and void.]**

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-125, which comprised I.C., § 39-125, as added by 1989, ch. 421, § 2, p. 1027, was repealed by S.L. 2000, ch. 132, § 30, effective July 1, 2000.

**Compiler's Notes.**

This section, which comprised S.L. 2006, ch. 367, § 2, became null and void on April 7, 2008, two years after it became effective.

**39-126. Duties of state and local units of government.** — (1) All state agencies shall incorporate the adopted ground water quality protection plan in the administration of their programs and shall have such additional authority to promulgate rules to protect ground water quality as necessary to administer such programs which shall be in conformity with the ground water quality protection plan. Cities, counties and other political subdivisions of the state shall incorporate the ground water quality protection plan in their programs and are also authorized and encouraged to implement ground water quality protection policies within their respective jurisdictions, provided that the implementation is consistent with and not preempted by the laws of the state, the ground water quality protection plan and any rules promulgated thereunder. All state agencies, cities, counties and other political subdivisions shall cooperate with the department of environmental quality, the department of agriculture and the department of water resources in disseminating public information and education materials concerning the use and protection of ground water quality, in collecting ground water quality management data, and in conducting research on technologies to prevent or remedy contamination of ground water.

(2) Notwithstanding any other provision of law to the contrary, except as provided in subsection (3) of this section, whenever a state agency, city, county or other political subdivision of the state issues a permit or license which deals with the environment, the entity issuing the permit or license shall take into account the effect the permitted or licensed activity will have on the ground water quality of the state and it may attach conditions to the permit or license in order to mitigate potential or actual adverse effects from the permitted or licensed activity on the ground water quality of the state. Nothing contained in this section shall authorize a state agency, city, county or other political subdivision of the state to issue or require a permit or license which it is not otherwise allowed by law to issue or require.

(3) Except as otherwise provided by the ground water quality protection plan, if a permit or license which deals with the environment is required to be obtained from a state agency and that agency considers the effect of the permitted or licensed activity on ground water quality, after notice to other units of government which may otherwise have regulatory authority over the activity which is the subject of the permit or license, a city, county or other political subdivision of the state shall not prohibit, limit or otherwise condition the rights of the permittee or licensee under the permit or license on account of the effect the permitted or licensed activity may have on ground water quality.



Nothing contained in this section shall be deemed to permit cities, counties or other political subdivisions of the state to regulate ground water quality with respect to any activity for which another statute or other statutes may have expressly or impliedly preempted such local ground water quality regulation.

#### History.

I.C., § 39-126, as added by 1989, ch. 421, § 2, p. 1027; am. 2000, ch. 132, § 31, p. 309.

### STATUTORY NOTES

#### Cross References.

Department of agriculture, § 22-101 et seq.  
Department of water resources, § 42-1701 et seq.

#### Prior Laws.

Former § 39-126 was repealed. See Prior Laws, § 39-101.

#### Effective Dates.

Section 39 of S.L. 2000, ch. 132 provides:  
“(1) This act shall be in full force and effect on and after July 1, 2000, except that the Division of Environmental Quality shall have one (1) year thereafter to accomplish necessary

changes to complete the physical transition to the new department.

“(2) Notwithstanding any other provisions of Chapter 52, Title 67, Idaho Code, the Administrative Rules Coordinator shall redesignate all references to the Division of Environmental Quality which appear in the master rule database maintained by the coordinator, to the Department of Environmental Quality without further republication or promulgation, to comply with the provisions of this act. Until such time as a republication of a rule occurs, any reference in a rule to the Division of Environmental Quality shall mean the Department of Environmental Quality.”

**39-127. Application of fertilizers and pesticides.** — No person shall be liable for ground water contamination resulting from the application of fertilizers or pesticides if the person applies a fertilizer according to generally accepted agronomic practices, or applies a pesticide product registered under the federal insecticide, fungicide, rodenticide act according to label requirements, including precautionary statements, of the U.S. environmental protection agency, and such application of the pesticide or fertilizer is otherwise done with the proper equipment required by law, is without negligence and is in accordance with state laws.

#### History.

I.C., § 39-127, as added by 1989, ch. 421, § 2, p. 1027.

### STATUTORY NOTES

#### Prior Laws.

Former § 39-127 was repealed. See Prior Laws, § 39-101.

#### Federal References.

The federal insecticide, fungicide, rodenticide act is codified as 7 USCS § 136 et seq.

#### Compiler's Notes.

Section 4 of S.L. 1989, ch. 421 read: “Short title. This act may be known and cited as the ‘Ground Water Quality Protection Act of 1989.’”

**39-128. Applicability — Promulgation of rules — Establishment of zones — Combustor charging composition and recordkeeping — Report to local government — Permit processing.** — 1. Except as provided in subsection 2 of this section, the provisions of this section shall apply to medical waste combustors with a maximum rated capacity equal to

or greater than three (3) tons per day. All combustors located on one (1) or more contiguous or adjacent properties and owned or operated by the same person or persons under common control shall be considered in determining the maximum rated capacity of a combustor.

2. The department is hereby directed to develop and propose, and the board is hereby directed to adopt, rules and regulations controlling emissions of air contaminants from all medical waste combustors, and implementing the provisions of this section except the provisions of subsections 8 and 9.

3. The following zones are hereby established:

a. Zone 1, consisting of the counties of Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce and Shoshone.

b. Zone 2, consisting of the counties of Ada, Adams, Boise, Canyon, Elmore, Gem, Owyhee, Payette, Valley and Washington.

c. Zone 3, consisting of the counties of Bannock, Bear Lake, Bingham, Blaine, Bonneville, Butte, Camas, Caribou, Cassia, Clark, Custer, Franklin, Fremont, Gooding, Jefferson, Jerome, Lemhi, Lincoln, Madison, Minidoka, Oneida, Power, Teton and Twin Falls.

4. Any county may petition the director to become incorporated into an adjacent zone. The director shall grant the petition provided it does not conflict with the purposes of this act, or any rule, regulation, permit or order issued or promulgated pursuant to this act.

5. For any combustor constructed or modified after the date of enactment of this section, no less than seventy per cent (70%) of the weight of the material charged into the combustor on an annual basis shall be material generated inside the zone in which the combustor is located.

6. An owner or operator of a combustor constructed and operated prior to the date of enactment of this section shall, by October 1, 1992, notify the department in writing describing the type, location and maximum rated capacity of the combustor.

7. Any person who owns or operates a combustor shall keep records as to the source, weight and type of material charged, and whether the material was generated within or outside the zone in which the combustor is located. These records shall be maintained for a period of not less than five (5) years and shall be made available to the department upon request. The requirements of this subsection may be fully or partially waived by the director if the owner or operator certifies to the department that no material generated outside the zone shall be charged into the combustor.

8. Any person proposing to construct or modify a combustor shall provide, in writing, to the local government a comprehensive report which shall include:

a. An overall description of the project;

b. The amount, type and disposal method of all solid waste produced;

c. The amount and content of any liquid to be discharged into the sewer system, applied to the land, or discharged into an impoundment or pond;

d. The amount, type and control of air emissions;

e. The effect of the facility on vehicular traffic;

f. The amount of noise produced by the facility;

g. The extent and control of odors from the facility; and



h. Any additional information requested, in writing, by the local government pertaining to the effect of the proposed facility upon the community or local resources.

9. The local government shall conduct at least one (1) public hearing regarding any proposal to construct or modify a combustor within the jurisdiction of the local government at which interested persons shall have an opportunity to be heard. At least fifteen (15) days prior to the hearing, notice of the time and place of the hearing, a brief summary of the proposal, and the location of the comprehensive report required by the provisions of subsection 8 of this section, shall be published in a newspaper of general circulation within the jurisdiction of the local government. The local government shall, after hearing, notify in writing the person proposing to construct or modify the combustor that the proposal conforms or does not conform to applicable planning and zoning ordinances. Reasonable conditions may be placed on any approval so as to ensure that construction or modification of the combustor is in conformance with local planning and zoning ordinances and that all necessary local, state and federal permits are obtained.

10. Any person applying to the department for a permit to construct or modify a combustor shall submit, as part of the application, the notification required in subsection 8 of this section indicating that the proposal conforms, or conforms with conditions, to local government planning and zoning ordinances. Any application received by the department which does not include such a notification of approval or conditional approval shall be incomplete.

11. The director shall have authority to sue in competent courts to enjoin any threatened or continuing violation of the provisions of this section, or any rule, regulation, permit or order issued or promulgated to implement the provisions of this section. The court shall grant injunctive relief upon a showing that a violation of the provisions of this section or any rule, regulation, permit or order implementing the provisions of this section has occurred and is reasonably likely to continue.

12. The director shall have the authority to declare that an emergency exists and that a combustor may receive a waiver to combust material generated outside the zone in which the combustor is located in excess of the amount specified in subsection 5 of this section, provided the director finds that such an action is necessary to protect human health and the environment. The waiver shall not extend beyond six (6) months for any single combustor and eighteen (18) months in total duration.

13. For purposes of this section only:

a. The term "combustor" means a medical waste combustor as defined in section 39-103, Idaho Code.

b. The term "local government" means the city government for the city in which the combustor is to be located or, if the combustor is to be located outside the limits of an incorporated city, the county government for the county in which the combustor is to be located.



**History.**

I.C., § 39-128, as added by 1992, ch. 189,  
§ 2, p. 588.

**STATUTORY NOTES****Prior Laws.**

Former § 39-128 was repealed. See Prior Laws, § 39-101.

**Legislative Intent.**

Section 1 of S.L. 1992, ch. 189 read: "(1) The legislature of the State of Idaho finds:

"(a) Maintaining the air quality of the state of Idaho to protect human health and the environment is a paramount concern and responsibility of the legislature.

"(b) Due to the diminishing capacity of landfills nationwide and the increased costs of waste disposal, the amount of medical waste proposed for disposal by combustion in Idaho has and will increase significantly.

"(c) The burning of medical waste, while an acceptable and effective form of disposal if controlled by reasonable measures, can create air emissions adversely affecting human health and the environment.

"(d) Existing state rules and regulations do not adequately control the emission of air contaminants from medical waste combustors.

"(e) The state's comprehensive efforts to preserve its valuable air quality resources are being threatened by the potential of an unrestricted increase in medical waste.

"(f) Uncontrolled increases in medical waste combustion can cause increased odors, noise, truck traffic and other significant adverse effects on local communities.

"(g) The state's air quality resources will be threatened by the increased combustion of medical waste unless existing air resources are conserved to meet the needs of the state and a fair share of the need of other states.

"(h) The amount of medical waste currently brought into or sent out of large regions of the state for purposes of combustion is negligible, and reasonable requirements controlling the combustion of these materials generated out-

side of large regions of the state will not adversely affect industry or commerce inside or outside large regions of the state.

"(i) The effective local management of sewage, drinking water, traffic, health protection, and other local government concerns is dependent on the thorough knowledge of all the projected impacts of a proposed medical waste combustor proposed within the jurisdiction of a local government.

"(2) Therefore, it is hereby declared that the purposes of this act are:

"(a) To direct the department to develop and propose, and the board to adopt, rules and regulations controlling the emission of air contaminants from medical waste combustors.

"(b) To establish a mechanism to control the amount of medical waste combusted within each major region of the state to those generated within the region plus a reasonable portion of these materials generated outside the region.

"(c) To ensure that Idaho adequately conserves its air quality resources in a manner which protects human health and the environment.

"(d) To ensure that local communities and governments are provided with comprehensive information and the ability to ensure compliance with local requirements for any proposed medical waste combustor prior to the processing of a state air quality permit."

**Compiler's Notes.**

The term "this act" in subsection 4 refers to S.L. 1992, ch. 189, which is codified as this section and appears in a note following this section.

The phrase "the date of enactment of this section" in subsections 5 and 6 refers to the date of this enactment of S.L. 1992, ch. 189, which was July 1, 1992.

**39-129. Applicability — Definition of local government and mandates — Authorization for local government agreements — Adoption of rules — Establishment of schedules — Priority of considerations — Report and recommendations.** — (1) The provisions of this section shall apply to local governments providing drinking water, municipal waste disposal, municipal sewage or waste water disposal or treatment, or air pollution abatement, which can demonstrate to the satisfaction of the department that increasing and cumulative regulatory requirements applicable to such services cannot be met in a timely and reasonable manner. The provisions of the section do not apply where prohibited by federal or state laws or regulations for the protection of human health and the environment.

(2) For purposes of this section the term "local government" means the

government of a county or incorporated city, and the term “federal mandates” means those requirements arising from federal statutes or subsequent regulations administered by the United States environmental protection agency.

(3) The department is hereby authorized to enter into agreements with local governments. The agreement may include a binding schedule enforceable under this chapter for the improvement, modification, construction, or other actions, necessary in order for the local government to come into compliance as expeditiously as practicable with human health and environmental protection statutes and rules stemming from federal mandates.

(4) The department may propose, and the board adopt, rules necessary for the implementation of this section.

(5) In establishing any local government agreement schedule, the term of the agreement shall not exceed fifteen (15) years, although successive agreements may be entered into. All agreements must be signed by the director or his designee and the mayor of the city or county commissioners of the county, as appropriate. All agreements are enforceable as orders under the provisions of this chapter.

(6) Agreements and schedules entered into under this act shall take into account, in descending priority the:

- (a) Protection of public health;
- (b) Protection of the environment;
- (c) Current tax structure and rates as compared to other local governments;
- (d) Ability of the local government to pay for costs of compliance;
- (e) Current fiscal obligations of the local government;
- (f) Other factors as determined by the department or the board.

#### History.

I.C., § 39-129, as added by 1994, ch. 162,  
§ 2, p. 369; am. 2000, ch. 132, § 32, p. 309.

### STATUTORY NOTES

#### Compiler's Notes.

The term “this act” in subsection (6) refers to S.L. 1994, ch. 162, which is codified as this section.

#### Effective Dates.

Section 39 of S.L. 2000, ch. 132 provides: “(1) This act shall be in full force and effect on and after July 1, 2000, except that the Division of Environmental Quality shall have one (1) year thereafter to accomplish necessary changes to complete the physical transition to the new department.

“(2) Notwithstanding any other provisions

of Chapter 52, Title 67, Idaho Code, the Administrative Rules Coordinator shall redesignate all references to the Division of Environmental Quality which appear in the master rule database maintained by the coordinator, to the Department of Environmental Quality without further republication or promulgation, to comply with the provisions of this act. Until such time as a republication of a rule occurs, any reference in a rule to the Division of Environmental Quality shall mean the Department of Environmental Quality.”

**39-130. Removal — Remediation — Bunker Hill mining and metallurgical complex superfund facility.** — Notwithstanding any other provision of law to the contrary, removal and remediation actions in or related to any operable unit of the Bunker Hill mining and metallurgical complex superfund facility performed by or on behalf of the department of

environmental quality shall not constitute public works pursuant to chapter 57, title 67, Idaho Code, chapter 19, title 54, Idaho Code, or any other provision of Idaho Code. In the letting and oversight of contracts for such removal or remediation actions, bonding of contractors may be required. The administrator of the division of waste [management] and remediation, department of environmental quality, and the director of the department of environmental quality, shall have the authority of the administrator of the division of purchasing, department of administration, and the director of the department of administration, respectively, in requiring open competitive bidding pursuant to sections 67-5715 through 67-5718A, 67-5725, 67-5726, 67-5729, 67-5730 and 67-5733, Idaho Code, and any relevant rules of the department of administration.

#### **History.**

I.C., § 39-130, as added by 2007, ch. 123,  
§ 1, p. 373.

#### **STATUTORY NOTES**

##### **Prior Laws.**

Former § 39-130 was repealed. See Prior Laws, § 39-101.

compiler to supply the correct name of the referenced state agency.

##### **Compiler's Notes.**

The bracketed insertion was added by the

### **39-131 — 39-136. Emergency medical services — Intent — Definitions — Authorized actions — Rules and regulations — Liability — Failure to obtain consent. [Repealed.]**

#### **STATUTORY NOTES**

##### **Compiler's Notes.**

These sections, which comprised I.C., §§ 39-131 to 39-136 as added by S.L. 1972, ch. 92, §§ 1 to 6, p. 200; am. 1980, ch. 145, §§ 1 to

6, p. 310, were repealed by § 1 of S.L. 1996, ch. 26, effective July 1, 1996. For present law, see § 56-1011 et seq.

### **39-137 — 39-138. [Reserved.]**

### **39-139 — 39-170. [Amended and redesignated.]**

#### **STATUTORY NOTES**

##### **Compiler's Notes.**

Former §§ 39-139 to 39-170 were amended

and redesignated as §§ 56-1011 to 56-1040, pursuant to S.L. 2001, ch. 110, §§ 4 to 35.

**39-171. Legislative findings and purpose.** — The legislature of the state of Idaho finds that:

(1) Wood and mill yard debris is a byproduct of wood processing and manufacturing; and

(2) If properly managed, wood and mill yard debris can be put to uses that have economic and environmental benefits; and

(3) There is a need for guidance about how to manage, store, use or



dispose of wood and mill yard debris so that nuisance and adverse environmental impacts are minimized; and

(4) This guidance will enable the department and local units of government to more effectively regulate the use or disposal of wood and mill yard debris.

The purpose of sections 39-171 through 39-174, Idaho Code, is to provide guidance for the sound use, storage, management and disposal of wood and mill yard debris by requiring the director of the department of environmental quality to appoint a committee to study the issues and to gather and disseminate information to persons and entities that deal with wood and mill yard debris.

**History.**

I.C., § [39-171] 39-166, as added by 1996, ch. 204, § 1, p. 627; am. and redesign. 2001, ch. 103, § 15, p. 253.

**STATUTORY NOTES**

**Compiler's Notes.**

S.L. 1996, ch. 147, § 1 and S.L. 1996, ch. 204, § 1, both effective July 1, 1996, purported to enact a new section of chapter 16, title 39, Idaho Code, designated as § 39-166. Since § 39-166, as enacted by S.L. 1996, ch. 147, § 1

was approved first, it was compiled as § 39-166 (and subsequently renumbered). Section 39-166, as enacted by S.L. 1996, ch. 204, § 1, was redesignated, in brackets, as § 39-171. That redesignation was made permanent by S.L. 2001, ch. 103.

**39-172. Definitions.** — For purposes of sections 39-171 through 39-174, Idaho Code:

(1) "Committee" means the wood and mill yard debris committee.

(2) "Director" means the director of the Idaho department of environmental quality.

(3) "Wood or mill yard debris" means solid wood, bark, or wood fiber generated from the process of manufacturing wood products that may include components of soil, rock, or moisture, and for which the use, management, storage or final disposition is approved pursuant to sections 39-171 through 39-174, Idaho Code.

**History.**

I.C., § [39-172] 39-167, as added by 1996, ch. 204, § 2, p. 627; am. and redesign. 2001, ch. 103, § 16, p. 253.

**STATUTORY NOTES**

**Compiler's Notes.**

S.L. 1996, ch. 147, § 1 and S.L. 1996, ch. 204, § 2, both effective July 1, 1996, purported to enact a new section of chapter 16, title 39, Idaho Code, designated as § 39-167. Since § 39-167, as enacted by S.L. 1996, ch. 147, § 1

was approved first, it was compiled as § 39-167 (and subsequently renumbered). Section 39-167, as enacted by S.L. 1996, ch. 204, § 1, was redesignated, in brackets, as § 39-172. That redesignation was made permanent by S.L. 2001, ch. 103.

**39-173. Committee — Members — Terms.** — The director shall appoint a committee to develop guidance on the use, storage, management and disposal of mill yard or wood debris. This committee shall consist of seven (7) individuals and shall include:

(1) One (1) representative of the department of environmental quality, who will provide administrative and other support to the committee.

(2) Two (2) representatives of the public health districts which have mill yard or wood debris within their districts.

(3) Two (2) representatives from industries generating wood or mill yard debris.

(4) Two (2) members with demonstrated technical knowledge important to the work of the committee.

Committee members shall be appointed to serve three (3) year terms. No member may serve more than two (2) full terms. Members serve at the pleasure of the director.

Members of the committee shall serve without compensation pursuant to section 59-509(a), Idaho Code.

#### History.

I.C., § [39-173] 39-168, as added by 1996, ch. 204, § 3, p. 627; am. and redesign. 2001, ch. 103, § 17, p. 253.

### STATUTORY NOTES

#### Compiler's Notes.

S.L. 1996, ch. 147, § 1 and S.L. 1996, ch. 204, § 3, both effective July 1, 1996, purported to enact a new section of chapter 16, title 39, Idaho Code, designated as § 39-168. Since § 39-168, as enacted by S.L. 1996, ch. 147, § 1

was approved first, it was compiled as § 39-168 (and subsequently renumbered). Section 39-168, as enacted by S.L. 1996, ch. 204, § 1, was redesignated, in brackets, as § 39-173. That redesignation was made permanent by S.L. 2001, ch. 103.

**39-174. Committee duties — Meetings.** — The committee's duties shall include:

(1) Developing a manual providing guidance for the use, storage, management and disposal of wood or mill yard debris to prevent public nuisances and minimize or prevent harmful environmental impacts. Guidance provided by the manual may be incorporated or adopted by reference in the rules of the department or other appropriate state agencies.

(2) Considering and developing specific solutions to unforeseen wood or mill yard debris use, storage, management or disposal as needed.

(3) Developing and sharing knowledge related to the use, storage, management and disposal of wood or mill yard debris including ways to constructively use or reclaim the debris.

(4) Making recommendations for any necessary permits, rules or legislation related to the use, storage, management or disposal of wood or mill yard debris.

The committee shall meet at least two (2) times a year at a time and place most convenient to the majority of members.

#### History.

I.C., § [39-174] 39-169, as added by 1996, ch. 204, § 4, p. 627; am. and redesign. 2001, ch. 103, § 18, p. 253.

### STATUTORY NOTES

#### Compiler's Notes.

S.L. 1996, ch. 147, § 1 and S.L. 1996, ch. 204, § 4, both effective July 1, 1996, purported to enact a new section of chapter 16, title 39, Idaho Code, designated as § 39-169. Since § 39-169, as enacted by S.L. 1996, ch. 147, § 1

was approved first, it was compiled as § 39-169 (and subsequently renumbered). Section 39-169, as enacted by S.L. 1996, ch. 204, § 1, was redesignated, in brackets, as § 39-174. That redesignation was made permanent by S.L. 2001, ch. 103.

**39-175. [Reserved.]**

**39-175A. Legislative findings and purposes.** — (1) The legislature finds:

- (a) That navigable waters within the state are one of the state's most valuable natural resources;
- (b) That it is in the public interest to promote effective and efficient regulation of the discharge of pollutants into navigable waters, and to explore whether the state should control such permitting decisions as authorized under the federal clean water act;
- (c) That the clean water act allows a state to develop and implement, with approval from the United States environmental protection agency, a national pollutant discharge elimination system (NPDES) program to be administered by the state;
- (d) That the clean water act, as amended, and regulations adopted pursuant thereto, establish complex and detailed provisions for regulation of those who discharge pollutants into navigable waters;
- (e) That a state program to implement permitting decisions as authorized in the clean water act, and regulations adopted pursuant thereto may enable the state to issue flexible permits consistent with the clean water act and avoid the existence of duplicative, overlapping or conflicting state and federal regulatory systems;
- (f) That a state program must be run with a minimum of federal interference in permitting, inspection and enforcement activities and that all state permitting actions under the approved state program are to be state actions and are not subject to consultation under the endangered species act or analysis under the provisions of the national environmental policy act. There should be no conditions of approval of the state program which have the effect of undermining or circumventing this principle;
- (g) That the decision to accept delegation of authority from the environmental protection agency to operate an NPDES program has significant public policy implications that should be made by the legislature.

(2) Therefore, it is the intent of the legislature to establish requirements that must be satisfied prior to legislative approval of a permitting program that complies with the clean water act and which incorporates flexible permitting procedures and rules to be promulgated by the board.

**History.**

I.C., § 39-175A, as added by 2005, ch. 57,  
§ 1, p. 211.

**STATUTORY NOTES****Federal References.**

The endangered species act, referred to in subdivision (1)(f), is codified as 16 USCS § 1531 et seq.

The national environmental policy act, referred to in subdivision (1)(f), is codified as 42 USCS § 4321 et seq.

The federal clean water act is codified as 33 U.S.C.S. § 1251 et seq.

**Compiler's Notes.**

The letters "NPDES" enclosed in parentheses so appeared in the law as enacted.



**39-175B. Relationship between state and federal law.** — The legislature cannot conveniently or advantageously set forth in this chapter all the requirements of all of the regulations which have been or will be established under the clean water act. However, any state permitting program must avoid the existence of duplicative, overlapping or conflicting state and federal regulatory systems. Further, the board may promulgate rules to implement a state permitting program but such rules shall not impose conditions or requirements more stringent or broader in scope than the clean water act and regulations adopted pursuant thereto. Further, the department will not require NPDES permits for activities and sources not required to have permits by the United States environmental protection agency.

**History.**

I.C., § 39-175B, as added by 2005, ch. 57,  
§ 1, p. 211.

**STATUTORY NOTES**

**Federal References.**

The federal clean water act is codified as 33  
U.S.C.S. § 1251 et seq.

**39-175C. Approval of state NPDES program.** — (1) The department is authorized to explore whether the state should operate an NPDES program by evaluating the costs and benefits to the state, of such a program, consistent with the requirements of this section. The department shall prepare a report to the legislature as to its findings by December 31, 2005.

(2) The board is authorized to proceed with negotiated rulemaking and all other actions that may eventually be necessary to obtain approval of a state NPDES program by the United States environmental protection agency.

(3) The director shall not execute a memorandum of agreement with the United States environmental protection agency to obtain NPDES program approval as specified under section 402 of the clean water act and 40 CFR 123 until completion of any required consultation and issuance of any final biological opinion or biological assessment under the endangered species act.

(4) Any memorandum of agreement executed by the director to obtain approval to operate a state NPDES program shall not be binding on the state of Idaho unless authorized by enactment of a statute. Any memorandum of agreement not authorized in the above manner shall be of no force and effect.

(5) Implementation of a state NPDES program shall not occur prior to statutory enactment of implementing legislation and authorization of a memorandum of agreement as specified in subsection (4) of this section.

(6) No provision of this chapter shall be interpreted as to supersede, abrogate, injure or create rights to divert or store water and apply water to beneficial uses established under section 3, article XV, of the constitution of the state of Idaho, and title 42, Idaho Code.

(7) Nothing in this section is intended to supersede any existing agree-

ments between federal, state or local agencies regarding authority over inspections, enforcement or other obligations under the clean water act.

#### History.

I.C., § 39-175C, as added by 2005, ch. 57,  
§ 1, p. 211.

### STATUTORY NOTES

#### Federal References.

Section 402 of the clean water act, referred to in subsection (3), is codified as 33 U.S.C.S. § 1342.

The endangered species act, referred to in

subsection (3), is codified as 16 USCS § 1531 et seq.

The clean water act is codified as 33 U.S.C.S. § 1251 et seq.

## CHAPTER 2

### VITAL STATISTICS

#### SECTION.

- 39-201 — 39-210. [Repealed.]
- 39-211. [Amended and redesignated.]
- 39-212 — 39-217. [Repealed.]
- 39-218. [Amended and redesignated.]
- 39-219 — 39-234. [Repealed.]
- 39-235 — 39-239. [Reserved.]

#### VITAL STATISTICS ACT

- 39-240. Short title.
- 39-241. Definitions.
- 39-242. Duties of director.
- 39-243. State registrar of vital statistics.
- 39-244. Duties of state registrar.
- 39-245. Certificate forms.
- 39-246. Local registration districts.
- 39-247. Local registration officers.
- 39-248. Other employees.
- 39-249. Transmittal of certificates and local records.
- 39-250. Completion and correction of certificates — Procedure — Other alterations prohibited.
- 39-251. Compensation of local registrars.
- 39-252. Fee for copies, searches and other services — Death certificates.
- 39-253. Accounting for fees.
- 39-254. Payment of fees to local registration officers.
- 39-255. Registration of births.
- 39-256. Registration of foundlings.
- 39-257. Marriage of natural parents of person born in Idaho — Judicial determination of parentage of person born in Idaho — New birth certificates — Procedure.
- 39-258. Adoption of persons born in Idaho — New birth certificate issued to replace original certificate — Procedure — Adoption proceedings not open to inspec-

#### SECTION.

- tion with certain exceptions — Duties of the clerks of courts issuing adoption decrees — Duties of state registrar of vital statistics.
- 39-259. Adoption of persons born in foreign countries.
- 39-259A. Voluntary adoption registry for providing limited access to birth information of adult adoptees.
- 39-260. Registration of deaths and stillbirths.
- 39-260A. Transportation of dead human bodies. [Repealed.]
- 39-261. Induced abortion reporting forms — Compilations.
- 39-262. Registration of marriage — Marriage certificates filed.
- 39-263. Marriage license fees.
- 39-264. Registration of persons authorized to perform marriage ceremony. [Repealed.]
- 39-265. Registration of divorces — Annulments of marriage.
- 39-266. Fee for court clerk.
- 39-267. Delayed registration.
- 39-268. Authorization for final disposition.
- 39-269. Disinterment — Rules.
- 39-270. Disclosure of information.
- 39-271. Records of institutions.
- 39-272. Duties to provide information.
- 39-273. Penalties.
- 39-274. Evidentiary character of records and copies of records.
- 39-275. Applicability.
- 39-276. Uniformity of interpretation.
- 39-277. Autopsies for suspected Creutzfeldt-Jakob disease.
- 39-278. Procedure for delayed registration or amendment of vital record.

**39-201 — 39-210. Jurisdiction of department of public welfare — Local registration districts — Local registrars — Dead bodies — Stillborn children — Death certificates — Burial permits — Disinterment. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised S.L. 1911, ch. 191, §§ 1, 3 to 10; 1913, ch. 39, § 1; C.L., §§ 1086a, 1086c to 1086j; C.S., §§ 1625 to

1633; am. 1921, ch. 122, § 1; I.C.A., §§ 38-201 to 38-209; am. 1935, ch. 61, § 1; am. 1945, ch. 85, §§ 1, 2; am. 1947, ch. 94, §§ 1, 2, were repealed by S.L. 1949, ch. 72, § 34.

**39-211. [Amended and redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.**

Section 31 of S.L. 1983, ch. 7 amended and redesignated this section as § 39-269.

**39-212. Duties of sexton. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised S.L. 1911, ch. 191, § 11; C.L., § 1086k; C.S., § 1634; I.C.A.,

§ 38-211, was repealed by S.L. 1949, ch. 72, § 34.

**39-213. Transportation of bodies of persons dying of certain diseases — Diseases. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised C.S., § 1634-a, as added by 1923, ch. 89, § 2, p.

101; I.C.A., § 38-212, was repealed by S.L. 1951, ch. 137, § 1.

**39-214 — 39-217. Registration of births — Duties of physicians and midwives — Certificates of birth — Given names. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised S.L. 1911, ch. 191, §§ 12 to 15; C.L., §§ 1086l to 1086o;

C.S., §§ 1635 to 1638; I.C.A., §§ 38-213 to 38-216; am. 1945, ch. 103, § 1, were repealed by S.L. 1949, ch. 72, § 34.

**39-218. [Amended and redesignated.]**

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-218, which comprised S.L.

1937, ch. 139, § 1, p. 224; am. 1945, ch. 47, § 1, p. 60; am. 1949, ch. 280, § 1, p. 573, was



repealed by S.L. 1959, ch. 104, § 1.

**Compiler's Notes.**

Section 18 of S.L. 1983, ch. 7 amended and redesignated this section as § 39-258.

**39-219 — 39-221. Affidavit of legitimation — Correction of certificates of birth, death and marriage. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised 1937, ch.

139, §§ 2 to 4, p. 224, were repealed by S.L. 1953, ch. 213, § 1, p. 324.

**39-222 — 39-234. Registration of physicians, midwives, and undertakers — Statistical records and forms — Compensation of local registrars — Fees — Penalties — County recorder — Fees — Failure to perform duties — Punishment. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised S.L. 1907, ch. 182, §§ 8, 13, 15, 16; am. 1911, ch. 191, §§ 16 to 24, 27; am. 1913, ch. 39, § 2; am. 1929, ch. 84, § 1; am. 1947, ch. 94, § 3; R.C.,

§§ 1087, 1090, 1092, 1093; C.L., §§ 1086p to 1086x, 1087, 1090, 1092, 1093; C.S., §§ 1639 to 1648, 1651, 1653, 1654; I.C.A., §§ 38-217 to 38-226, 38-229, 38-231, 38-232, were repealed by S.L. 1949, ch. 72, § 34.

**39-235 — 39-239. [Reserved.]**

**VITAL STATISTICS ACT**

**39-240. Short title.** — This act may be cited as the "Idaho Vital Statistics Act."

**History.**

1949, ch. 72, § 32, p. 117; redesign. and am. 1983, ch. 7, § 1, p. 23.

**STATUTORY NOTES**

**Compiler's Notes.**

This section was formerly compiled as § 39-272.

The words "this act" refer to S.L. 1949, ch. 72, which is compiled as §§ 39-240 to 39-249, 39-251 to 39-256, 39-260, 39-262, 39-263, 39-265 to 39-268, 39-270, 39-271, 39-273, 39-274, and 39-276.

Sections 33 and 34 of S.L. 1949, ch. 72, provide as follows:

"Section 33. Severability. — If any provision of this act, or the application thereof to any person or circumstances, shall be adjudged to be invalid, such judgment shall not affect any other provision or application of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

"Section 34. Repeals. — Sections 38-201, 38-202, 38-203, 38-204, 38-204(a), 38-205, 38-206, 38-207, 38-208, 38-209, 38-211, 38-213, 38-214, 38-215, 38-216, 38-217, 38-218, 38-219, 38-220, 38-221, 38-222, 38-223, 38-224, 38-225, 38-226, 38-227, 38-228, 38-229, 38-230, 38-231, 38-232, Idaho Code Annotated, Chapter 61, Idaho Session Laws of 1935, Chapter 85, Idaho Session Laws of 1945, Chapter 103, Idaho Session Laws of 1945, Chapter 94, Idaho Session Laws of 1947, are all hereby repealed."

**Effective Dates.**

Section 35, S.L. 1949, ch. 72, provided this act shall be effective from and after January 1, 1950.

## JUDICIAL DECISIONS

**Jurisdiction.**

Because the Idaho Vital Statistics Act does not expressly provide for extraterritorial application, the act cannot be construed to have any binding authoritative effect on other ju-

risdictions; therefore, the magistrate court had no jurisdiction to order the amendment of petitioner's Missouri birth certificate. *Phillips v. Consolidated Supply Co.*, 126 Idaho 973, 895 P.2d 574 (1995).

**39-241. Definitions.** — For the purposes of this chapter and this chapter only, the following terms shall be construed to have the meanings hereinafter set forth:

(1) "Adoptive parent" means an adult who has become a parent of a child through the legal process of adoption.

(2) "Advanced practice professional nurse" means a professional nurse licensed in this state who has gained additional specialized knowledge, skills and experience through a nationally accredited program of study and is authorized to perform advanced nursing practice as defined in section 54-1402, Idaho Code, and includes certified nurse midwives and nurse practitioners as defined in the same section.

(3) "Board" means the Idaho state board of health and welfare.

(4) "Certified copy" means the reproduction of an original vital record by typewritten, photographic or electronic means. Such reproductions, when certified by the state registrar, shall be used as the original.

(5) "Consent" means a verified written statement which has been notarized.

(6) "Dead body" means a lifeless human body or such parts of the human body or the bones thereof from the state of which it reasonably may be concluded that death occurred.

(7) "Director" means the director of the department of health and welfare.

(8) "Fetal death" means death prior to the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy; the death is indicated by the fact that after such expulsion or extraction, the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

(a) "Induced termination of pregnancy (induced abortion)" means the purposeful interruption of pregnancy with an intention other than to produce a live-born infant or to remove a dead fetus and which does not result in a live birth.

(b) "Spontaneous fetal death" means the expulsion or extraction of a product of human conception resulting in other than a live birth and which is not an induced termination of pregnancy.

(9) "Identifying information" includes the following information:

(a) The name of the qualified adoptee before placement in adoption;

(b) The name and address of each qualified birthparent as it appears in birth records;

(c) The current name, address and telephone number of the qualified adult adoptee; and

(d) The current name, address and telephone number of each qualified birthparent.

(10) "Live birth" means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, which, after such expulsion or extraction, breathes, or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached. Heartbeats are to be distinguished from transient cardiac contractions; respirations are to be distinguished from fleeting respiratory efforts or gasps.

(11) "Person in charge of interment" means any person who places or causes to be placed a stillborn fetus or dead body or the ashes of the same, after cremation, in a grave, vault, urn, or other receptacle, or otherwise disposes thereof.

(12) "Physician" means a person legally authorized to practice medicine and surgery, osteopathic medicine and surgery or osteopathic medicine in this state as defined in section 54-1803, Idaho Code.

(13) "Physician assistant" means any person who is a graduate of an acceptable training program and who is otherwise qualified to render patient services as defined in section 54-1803, Idaho Code.

(14) "Qualified adult adoptee" means an adopted person eighteen (18) years of age or older who was born in Idaho.

(15) "Qualified adult birth sibling" means a genetic, biological, or natural brother or sister or half-brother or half-sister, eighteen (18) years of age or older.

(16) "Qualified birthparent" means a genetic, biological, or natural parent whose rights were voluntarily or involuntarily terminated by a court or otherwise. "Birthparent" includes a man who is the parent of a child prior to the termination of parental rights.

(17) "Record" means the original certificate of an event and any replacement thereof filed for record by virtue of authority contained in this chapter, as well as instruments of any nature provided by this chapter as a means of effecting replacement of certificates.

(18) "Registrar" means the state registrar of vital statistics or a designated representative.

(19) "Relative" includes only an individual's spouse, birthparent, adoptive parent, sibling, or child who is eighteen (18) years of age or older.

(20) "Stillbirth" means a spontaneous fetal death of twenty (20) completed weeks gestation or more, based on a clinical estimate of gestation, or a weight of three hundred fifty (350) grams (twelve and thirty-five hundredths (12.35) ounces) or more.

(21) "Vital statistics" includes the registration, preparation, transcription, collection, compilation and preservation of data pertaining to births, adoptions, legitimations, deaths, stillbirths, induced terminations of pregnancy, marital status and data incidental thereto.

(22) "Voluntary adoption registry" or "registry" means a place where eligible persons, as described in section 39-259A, Idaho Code, may indicate their willingness to have their identity and whereabouts disclosed to each other under conditions specified in section 39-259A, Idaho Code.



**History.**

1949, ch. 72, § 1, p. 117; am. 1959, ch. 104, § 2, p. 221; am. 1974, ch. 23, § 61, p. 633; am. 1983, ch. 7, § 2, p. 23; am. 1985, ch. 59, § 1, p. 112; am. 2002, ch. 277, § 1, p. 809; am. 2007, ch. 243, § 1, p. 715.

**STATUTORY NOTES**

**Cross References.**

Board of health and welfare, § 56-1005.  
State registrar of vital statistics, § 39-243.

the section to the extent that a detailed comparison is impracticable.

**Amendments.**

The 2007 amendment, by ch. 243, rewrote

**Compiler's Notes.**

The words in parentheses so appeared in the law as enacted.

**39-242. Duties of director. —** The director shall:

- (a) Establish a vital statistics unit with suitable offices properly equipped for the preservation of its official records;
- (b) Install statewide system of vital statistics;
- (c) Supervise and require the enforcement of this chapter and the regulations of the board made pursuant thereto. The board is authorized to adopt, amend and repeal regulations for the purpose of carrying out the provisions of this chapter, in accordance with chapter 52, title 67, Idaho Code.

**History.**

1949, ch. 72, § 2, p. 117; am. 1974, ch. 23, § 62, p. 633; am. 1983, ch. 7, § 3, p. 23.

**RESEARCH REFERENCES**

**Am. Jur. —** 39 Am. Jur. 2d, Health, § 35 et seq.  
66 Am. Jur. 2d, Records and Recording Laws, § 1 et seq.

**C.J.S. —** 39A C.J.S., Health and Environment, § 84 et seq.

**39-243. State registrar of vital statistics. —** The director shall designate and appoint a state registrar of vital statistics who shall be qualified in accordance with the standards prescribed by law or regulations of the board. Compensation shall be fixed in the same manner as the salary of other employees of the department.

**History.**

1949, ch. 72, § 3, p. 117; am. 1974, ch. 23, § 63, p. 633; am. 1983, ch. 7, § 4, p. 23.

**39-244. Duties of state registrar. —** The state registrar, under the direction of the director, shall:

- (a) Have charge of the vital statistics unit;
- (b) Be official custodian of all its files and records;
- (c) Perform the duties prescribed by law and the regulations of the board;
- (d) Have supervisory power over local vital statistics registration and local registration officers;
- (e) Enforce this chapter and regulations of the board; and
- (f) Have the authority to delegate portions of the vital records responsibility to the duly appointed local registrar(s).

**History.**

1949, ch. 72, § 4, p. 117; am. 1974, ch. 23,  
§ 64, p. 633; am. 1983, ch. 7, § 5, p. 23.

**STATUTORY NOTES****Compiler's Notes.**

The "s" in parentheses in subdivision (f) so  
appeared in the law as enacted.

**RESEARCH REFERENCES**

**Am. Jur.** — 39 Am. Jur. 2d, Health, § 25 et  
seq.

**C.J.S.** — 39A C.J.S., Health and Environ-  
ment, § 84 et seq.

**39-245. Certificate forms.** — The form of certificates used under the provisions of this chapter shall be prescribed by the director and shall include as a minimum the items required by the respective standard certificates as recommended by the national agency in charge of vital statistics; provided, however, that the provisions of section 39-1005, Idaho Code, shall be given effect on a certificate to which that section is applicable.

**History.**

1949, ch. 72, § 5, p. 117; am. 1974, ch. 23,  
§ 65, p. 633; am. 1983, ch. 7, § 6, p. 23.

**STATUTORY NOTES****Cross References.**

Birth certificates, § 39-255.  
Certificates for death of stillborn children,  
§ 39-260.  
Congenital syphilis, report of births to state  
whether required tests made, § 39-1005.  
Correction of factual statements in birth  
certificates, § 39-250.  
Death certificates, § 39-260.

Inflammation of eyes of newborn, birth re-  
port to state whether or not germicide was  
instilled in eyes of infant, § 39-904; certifica-  
tion to prosecuting attorney when compliance  
not shown, § 39-907.

Marriage licenses, § 32-401 et seq.  
Records of local registrars, § 39-249.

**39-246. Local registration districts.** — The director shall establish registration districts and change the boundaries of the same from time to time which shall conform to political subdivisions, or combinations or parts thereof.

**History.**

1949, ch. 72, § 6, p. 117; am. 1974, ch. 23,  
§ 66, p. 633.

**39-247. Local registration officers.** — The state registrar shall appoint local registration officers for such registration districts as are established by the director. Such local registration officers shall meet the qualifications fixed by the board, and shall perform such duties as are required by the chapter and the regulations of the board.

**History.**

1949, ch. 72, § 7, p. 117; am. 1983, ch. 7,  
§ 7, p. 23.

## STATUTORY NOTES

**Cross References.**

Burial or removal permits, § 39-268.

Penalty for failure to enforce law or perform duties, § 39-273.

**39-248. Other employees.** — The director shall provide such assistants as the vital statistics unit may require and determine the compensation and duties of persons thus employed.

**History.**

1949, ch. 72, § 8, p. 117; am. 1974, ch. 23, § 67, p. 633; am. 1983, ch. 7, § 8, p. 23.

**39-249. Transmittal of certificates and local records.** — Local registration officers shall transmit all certificates filed with them to the state registrar in accordance with the regulations of the board. Complete and accurate copies of all certificates shall be made by the local registrar for local records purposes.

**History.**

1949, ch. 72, § 9, p. 117; am. 1983, ch. 7, § 9, p. 23.

**39-250. Completion and correction of certificates — Procedure — Other alterations prohibited.** — A certificate of any event shall be completed, corrected, amended or otherwise altered after being filed with the vital statistics unit only in accordance with this chapter and rules promulgated by the board.

(1) A certificate that is amended under the provisions of this section shall be marked "amended," except as otherwise provided in this section. The date of amendment and a summary description of the evidence submitted in support of the amendment shall be filed with or made a part of the record. The department shall prescribe by rule the conditions under which additions or minor corrections may be made to certificates or records within one (1) year after the date of the event without the certificate being marked "amended."

(2) Upon receipt of a notarized voluntary acknowledgment of paternity, the state registrar shall amend the certificate of birth to show such paternity if paternity is not already shown on the certificate of birth, and change the child's surname to that of the father, if both parents so request. Such certificate shall not be marked "amended."

(3) Upon receipt of both a notarized affidavit of nonpaternity signed by the husband attesting that he is not the father, and a notarized acknowledgment of paternity signed by the mother and the alleged father attesting that the alleged father is the father, the state registrar shall amend the certificate of birth to show such paternity, and change the child's name, if so requested by the mother and the alleged father. Such certificate shall not be marked "amended."

(4) Upon receipt of a certified copy of an order of a court of competent jurisdiction changing the name of a person born in this state and upon request of such person or the parent(s), guardian, or legal representative,



the state registrar shall amend the certificate of birth to show the new name.

(5) When an applicant does not submit the minimum documentation required in the rules for amending a vital record in a manner otherwise permitted by rule, or when the state registrar has reasonable cause to question the validity or adequacy of the applicant's sworn statements or the documentary evidence, and if the deficiencies are not corrected, the state registrar shall not amend the vital record and shall advise the applicant of the reason for this action and shall further advise the applicant of the right to petition a court of competent jurisdiction for an order establishing the facts necessary to make the requested amendment.

(6) If an acknowledgment of paternity or affidavit of nonpaternity is rescinded pursuant to section 7-1106, Idaho Code, and the certificate of birth had been prepared or amended in accordance with the acknowledgment, the state registrar shall not release any copies of the certificate of birth except as required for a legal proceeding until a court order determining paternity has been provided to the state registrar. If the mother was married at the time of either conception or birth, or between conception and birth, the court shall also determine if the husband is the father of the child.

#### History.

I.C., § 39-250, as replaced by 1959, ch. 104, § 3, p. 221; am. 1983, ch. 7, § 10, p. 23; am.

1998, ch. 106, § 2, p. 362; am. 2010, ch. 78, § 1, p. 129.

### STATUTORY NOTES

#### Prior Laws.

Former § 39-250, which comprised S.L. 1949, ch. 72, § 10, p. 117, was repealed by S.L. 1959, ch. 104, § 3.

petition a court" for "right to appeal to a court" and added "for an order establishing the facts necessary to make the requested amendment."

#### Amendments.

The 2010 amendment, by ch. 78, redesignated the subsections numerically; and in subsection (5), inserted "in a manner otherwise permitted by rule," substituted "right to

#### Compiler's Notes.

The "s" in parentheses in subdivision (4) so appeared in the law as enacted.

### JUDICIAL DECISIONS

#### Effect on Judicial Proceedings.

The issues before the magistrate court, concerning petitioner's action seeking amendment of race designation on his Idaho marriage certificate and intervention of business

competitor in such action, were rendered moot upon the amendment of the certificate by the registrar of the bureau of vital statistics. *Phillips v. Consolidated Supply Co.*, 126 Idaho 973, 895 P.2d 574 (1995).

**39-251. Compensation of local registrars.** — Each local registrar shall be paid a fee to be established by regulations adopted by the board, for:

(a) each certificate returned by the local registrar to the state registrar in accordance with the provisions of this chapter and the regulations of the board; and

(b) each report of no certificate filed during any calendar month. The board may establish a graduated scale for the payment of fees to local registrars, either by limiting the aggregate amount of fees to be paid or by graduating the fees according to the number of registrations.

**History.**

1949, ch. 72, § 12, p. 117; am. and redesign.  
1983, ch. 7, § 11, p. 23.

**STATUTORY NOTES****Compiler's Notes.**

This section was formerly compiled as § 39-252.

Former § 39-251 was amended and redesignated as § 39-266 by S.L. 1983, ch. 7, § 28.

**39-252. Fee for copies, searches and other services — Death certificates.** — (1) The state registrar shall be entitled to receive a fee of thirteen dollars (\$13.00) for the making of certified copies of records or for a search of the files when no copies are made, provided that the national agency in charge of vital statistics may obtain copies or certifications of data from records without payment of fees, provided that the state incurs no expense in connection therewith. The fee shall be reviewed by the board of health and welfare, and future changes in the fee and enactment of fees for other services shall be established by rules adopted by the board.

(2) For each certified copy of a death certificate there shall be charged an additional fee of one dollar (\$1.00) to be deposited in the state treasurer's local government investment pool, a fund hereby created for the Idaho state association of county coroners. Such moneys shall be used for the training of newly elected coroners and for the continuing education of county coroners and their deputies.

**History.**

1949, ch. 72, § 13, p. 117; am. 1970, ch. 2, § 1, p. 4; am. 1981, ch. 200, § 1, p. 353; am.

and redesign. 1983, ch. 7, § 12, p. 23; am. 2010, ch. 355, § 1, p. 932.

**STATUTORY NOTES****Cross References.**

Board of health and welfare, § 56-1005.

**Amendments.**

The 2010 amendment, by ch. 355, in the section heading, added "Death certificates"; added the subsection (1) designation and therein substituted "thirteen dollars (\$13.00)" for "four dollars (\$4.00)" and "rules" for "regulations"; and added subsection (2).

**Compiler's Notes.**

This section was formerly compiled as § 39-253.

Former § 39-252 was amended and redesignated as § 39-251 by § 11 of S.L. 1983, ch. 7.

**Effective Dates.**

Section 2 of S.L. 1981, ch. 200 declared an emergency. Approved April 1, 1981.

S.L. 2010, chapter 355 became law without the signature of the governor, effective July 1, 2010.

**JUDICIAL DECISIONS****DECISIONS UNDER PRIOR LAW****Prima Facie Evidence.**

A certified copy of a death certificate made by a physician and also a certified copy of an attending physician's report of accident to the industrial accident board (now industrial

commission) under the workmen's (now worker's) compensation law were admissible as evidence and were prima facie evidence of the contents thereof. *Hillman v. Utah Power & Light Co.*, 56 Idaho 67, 51 P.2d 703 (1935).

**39-253. Accounting for fees.** — Fees received from the certifications of

such records, from a search of the files or for other services shall be accounted for as prescribed by the state controller.

**History.**

1949, ch. 72, § 14, p. 117; am. 1974, ch. 23, § 68, p. 633; am. 1976, ch. 51, § 8, p. 152; am.

and redesisg. 1983, ch. 7, § 13, p. 23; am. 1994, ch. 180, § 71, p. 420.

**STATUTORY NOTES****Cross References.**

State controller, § 67-1001 et seq.

**Compiler's Notes.**

This section was formerly compiled as § 39-254.

Former § 39-253 was amended and redesignated as § 39-252 by § 12 of S.L. 1983, ch. 7.

**Effective Dates.**

Section 241 of S.L. 1994, ch. 180 provided:

"This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller." Since such amendment was adopted, the amendment to this section by § 71 of S.L. 1994, ch. 180 became effective January 2, 1995.

**39-254. Payment of fees to local registration officers.** — All amounts payable to local registrars under the provisions of this chapter shall be paid by the respective treasurers of the incorporated city or county in which the registration district is situated out of the general fund of such incorporated city or county, upon certification by the state registrar. The state registrar shall certify to the auditors of the various counties and cities, not less than semiannually, or at such other regular times as may be deemed expedient, the names of the local registrars and the amounts due each at the rates fixed by the board by regulations promulgated pursuant to section 39-251, Idaho Code.

**History.**

1949, ch. 72, § 15, p. 117; am. and redesisg. 1983, ch. 7, § 14, p. 23.

**STATUTORY NOTES****Compiler's Notes.**

This section was formerly compiled as § 39-255.

Former § 39-254 was amended and redesignated as § 39-253 by § 13 of S.L. 1983, ch. 7.

**39-255. Registration of births.** — A certificate of each birth which occurs in this state shall be filed with the local registrar of the district in which the birth occurs, or as otherwise directed by the state registrar, within fifteen (15) days of the date of birth. No certificate shall be deemed complete until every item of information required shall have been provided or its omission satisfactorily accounted for.

(a) When a birth occurs in an institution or en route thereto, the person in charge of the institution or a designated representative shall obtain the personal data, prepare the certificate, secure the signatures required, and file the certificate within fifteen (15) days of the date of birth. The physician or other person in attendance shall provide the medical information required by the certificate and certify to the facts of birth. When the physician, or other person in attendance, is physically unable to certify to the facts of



birth within the time prescribed in this section, the person in charge of the institution may complete and sign the certificate.

(b) When a birth occurs outside an institution, the certificate shall be prepared and filed by:

(1) The physician or other person in attendance at or immediately after such birth; or

(2) When no physician or other person is present at or immediately after such birth: the father, or in the event of the death, disability or absence of the father, the mother; or in the event of the death or disability of the mother, the householder or owner of the premises where the birth occurred.

(c) The father, mother or guardian shall verify the facts entered on the certificate by their signature.

(d) When a birth occurs on a moving conveyance within the United States and the child is first removed from the conveyance in this state, the birth shall be registered in this state and the place where the child is first removed shall be considered the place of birth. When a birth occurs on a moving conveyance while in international air space or in a foreign country or its air space and the child is first removed from the conveyance in this state, the birth shall be registered in this state, but the certificate shall show the actual place of birth insofar as can be determined.

(e)(1) If the mother was married at the time of either conception or birth, or between conception and birth, the name of the husband shall be entered on the certificate as the father of the child, unless:

(i) Paternity has been determined otherwise by a court of competent jurisdiction; or

(ii) The husband has executed an affidavit of nonpaternity attesting that he is not the father, the mother has executed an acknowledgment of paternity attesting that the alleged father is the father, and the alleged father has executed an acknowledgment of paternity attesting that he is the father. Affidavits may be joint or individual or a combination thereof, and each signature shall be individually notarized. In such event, the alleged father shall be shown as the father on the certificate.

(2) If the mother was not married at the time of either conception or birth, or between conception and birth, the name of the father shall not be entered on the certificate without a notarized voluntary acknowledgment of paternity.

(3) In any case in which paternity of a child is determined by a court of competent jurisdiction, the name of the father and surname of the child shall be entered on the certificate of birth in accordance with the finding and order of the court.

(4) If the father is not named on the certificate of birth, no other information about the father shall be entered on the certificate.

#### History.

1949, ch. 72, § 16, p. 117; am. and redesign.  
1983, ch. 7, § 15, p. 23; am. 1995, ch. 28, § 1,

p. 42; am. 1995, ch. 53, § 1, p. 120; am. 1998,  
ch. 106, § 3, p. 362.

## STATUTORY NOTES

**Amendments.**

This section was amended by two 1995 acts which appear to be compatible and have been compiled together.

The 1995 amendment, by ch. 28, § 1, in the middle of the introductory paragraph, inserted “, or as otherwise directed by the state registrar,” preceding “within fifteen (15) days.”

The 1995 amendment, by ch. 53, § 1, divided the former subdivision (e)(1) into the

present subdivision (e)(1) and paragraph (e)(1)(i) by substituting “unless: (i) Paternity” for “unless paternity” and adding “; or” at the end of paragraph (e)(1)(i); and added paragraph (e)(1)(ii).

**Compiler’s Notes.**

This section was formerly compiled as § 39-256.

Former § 39-255 was amended and redesignated as § 39-254 by S.L. 1983, ch. 7, § 14.

## RESEARCH REFERENCES

**Am. Jur.** — 39 Am. Jur. 2d, Health, § 108.

**C.J.S.** — 39A C.J.S., Health and Environment, § 74.

**39-256. Registration of foundlings.** — A foundling certificate shall be filed for each child of unknown parentage within fifteen (15) days of the time the child was found and in the form prescribed by the board. The certificate shall be prepared by the person assuming custody of the child and shall be filed with the local registrar of the district in which the child was found. Such certificate shall be acceptable for all purposes in lieu of a certificate of birth.

**History.**

1949, ch. 72, § 17, p. 117; am. and redesign. 1983, ch. 7, § 16, p. 23.

## STATUTORY NOTES

**Compiler’s Notes.**

This section was formerly compiled as § 39-257.

Former § 39-256 was amended and redesignated as § 39-255 by S.L. 1983, ch. 7, § 15.

**39-257. Marriage of natural parents of person born in Idaho — Judicial determination of parentage of person born in Idaho — New birth certificates — Procedure.** — When a person born in Idaho has been legitimated by the subsequent marriage of said person’s natural parents and immediately assumes or is assigned a name other than is shown on the recorded birth certificate, the birth certificate of such person may be replaced by a new and conventional certificate (prepared and filed by the state registrar), reflecting the name so assumed or assigned, upon proper application therefor filed by such legitimated person or the parents or one of them, but no one else. Such application shall be in writing and shall be accompanied by a copy of the relevant marriage certificate (if there was one issued and regardless of where it was issued), certified by the issuer or recorder of the same, and, in any event, an affidavit of each of the spouses, factually indicating such parentage, the time and place of the marriage, the identity of the child concerned and the child named in the original birth certificate and giving the assumed or assigned name of the child, which instruments shall be filed of record along with the old birth certificate, but

separate from any replacement issued hereunder (which shall be filed separately).

When a person born in Idaho has had said person's natural parentage finally determined by an Idaho court, the court shall require the preparation of a report of paternity on a form prescribed and furnished by the state registrar. The report shall include such facts as necessary to complete the amended birth certificate and be certified by the clerk of the court. If a court of some other state issued a decree or report of paternity, the state registrar may prepare and file a new and conventional birth certificate for that person, reflecting the name(s) of the parent(s) and the child's new name, if applicable, upon application made by that person or either or both of the persons adjudged to be the natural parent(s), or that person's guardian, but no one else. This application shall be accompanied by a certified copy of the court decree in question and an affidavit of one (1) person factually indicating that the decree involves the same person that the original birth certificate involved. These instruments shall be filed of record along with the old birth certificate, but separate from any replacement issued hereunder (which shall be filed separately).

It shall be the duty of each clerk of court in the state of Idaho to file with the state registrar certified copies of each final decree of paternity determination made by that court within fifteen (15) days after each of such decrees becomes final. Such certified copies of such decrees and all other instruments mentioned in this section, except any replacement certificate, are confidential and shall not be revealed to any person other than the registrant, if of age, the parents or the duly appointed legal representative of any of them, or upon court order issued in the interest of justice.

History.

I.C., § 39-259, as replaced by 1959, ch. 104,  
§ 4, p. 221; am. and redesisg. 1983, ch. 7, § 17,

p. 23; am. 1990, ch. 213, § 35, p. 480; am.  
1993, ch. 315, § 1, p. 1166; am. 1995, ch. 31,  
§ 1, p. 49.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 39-259.  
Former § 39-257 was amended and redesi-

gnated as § 39-256 by § 16 of S.L. 1983, ch.  
7, § 16.  
The words in parentheses so appeared in  
the law as enacted.

**39-258. Adoption of persons born in Idaho — New birth certificate issued to replace original certificate — Procedure — Adoption proceedings not open to inspection with certain exceptions — Duties of the clerks of courts issuing adoption decrees — Duties of state registrar of vital statistics.** — (a) Whenever a final decree of adoption, issued by an Idaho court, declares a person born in Idaho to be adopted by someone other than his or her natural parents, the court shall require the preparation of a report (denominated as a certificate in accordance with Idaho court rules) of adoption on a form prescribed and furnished by the state registrar. The report shall include such facts as are necessary to locate and identify the certificate of birth of the person adopted; shall provide information necessary to establish a new certificate of birth for



the person adopted; and shall identify the order of adoption and be certified by the clerk of the court.

(b) Information necessary to prepare the report of adoption shall be furnished by each petitioner for adoption or the petitioner's attorney. The provision of such information shall be prerequisite to the issuance of a final decree in the matter of the court.

(c) The report of adoption shall, within fifteen (15) days after becoming final, be recorded by the clerk of the court with the vital statistics unit in the state department of health and welfare.

(d) If a court of some other state issued a decree or report of adoption of a person actually born in Idaho, the certified copy or report may be similarly filed by the person involved or by the adoptive parents. Failure to file certified copies or reports of said decrees within said period of time, however, shall not bar issuance of a new birth certificate as hereinafter provided. This copy of said decree or report shall be filed with and remain a part of the records of the vital statistics unit.

(e) Upon receipt by the vital statistics unit of the certified report of adoption, a new certificate of birth shall be issued (but only in cases where such person's birth is already recorded with the vital statistics unit) bearing among other things the name of the person adopted, as shown in the report of adoption, except that a new certificate of birth shall not be established if so requested by the court decreeing the adoption, the adoptive parents, or the adopted person. No such birth certificate shall have reference to the adoption of said person. Such birth certificate shall supplant and constitute a replacement of any birth certificate previously issued for said person and shall be the only birth certificate open to public inspection.

Provided however, upon good cause shown and the affidavit of the adoptive parents that a diligent search has been made, but no certificate of birth for the adoptive child can be located, the probate judge may order the adoptive child examined, at the expense of the adoptive parents, by a doctor of medicine licensed by the state of Idaho. The examination will be conducted pursuant to rules promulgated by the state board of health and welfare for the purpose of determining those matters required for the issuance of an original birth certificate. Upon the examination of the doctor made pursuant to the rules of the state board of health and welfare, the court may order the vital statistics unit to issue an original birth certificate for the adoptive child based upon those facts determined by the examination and included in the court's order. In such case a certified copy of the court order shall be provided to the vital statistics unit.

(f) In respect to form and nature of contents, such a new birth certificate shall be identical with a birth certificate issued to natural parents for the birth of a child, except that the adoptive parents shall be shown as parents and the adopted person shall have the name assigned by the decree of adoption as shown on the report of adoption. In a case where a single person adopts another person, any new birth certificate may designate the adopting parent as adoptive.

(g) Whenever an adoption decree is amended, annulled or rescinded, the clerk of the court shall forward a certified copy of the amendment, annulment or rescindment to the vital statistics unit in accordance with the time

provisions in subsection (c) of this section. Unless otherwise directed by the court, the vital statistics unit shall amend the certificate of birth upon receipt of a certified copy of an amended decree of adoption. Upon receipt of a certified copy of a decree of annulment or rescindment of adoption, the original certificate of birth shall be restored to its place in the files and the new certificate and evidence shall not be subject to inspection except upon order of a court of record of this state.

(h) All records and information specified in this section other than a new birth certificate issued hereunder, and all records, files and information of any court in this state relating to adoption proceedings, shall not be open to inspection except as provided in section 39-259A, Idaho Code, or upon the order of a court of record of this state; provided however, that the provisions of section 16-1616, Idaho Code, to the contrary notwithstanding, any probate court, or the judge thereof, may furnish a certified copy of a decree of adoption to any duly authorized agency of the United States or the state of Idaho without procuring any prior court order therefor.

**History.**

I.C., § 39-218, as replaced by 1959, ch. 104,	1974, ch. 23, § 60, p. 633; am. and redesisg.
§ 1, p. 221; am. 1965, ch. 208, § 1, p. 477; am.	1983, ch. 7, § 18, p. 23; am. 1985, ch. 59, § 2,
	p. 112; am. 2005, ch. 391, § 53, p. 192.

**STATUTORY NOTES**

**Cross References.**

Adoption of children, § 16-1501 et seq.	Former § 39-258 was amended and redesignated as § 39-260 by S.L. 1983, ch. 7, § 20.
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**Compiler's Notes.**

This section was formerly compiled as § 39-218.	The words in parentheses so appeared in the law as enacted.
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**39-259. Adoption of persons born in foreign countries. —**

(a) When it appears from a final decree of adoption issued by an Idaho court that a person born in a foreign country has been adopted in Idaho by someone other than the person's natural parents, the court shall require the preparation of a report (denominated as a certificate in accordance with Idaho court rules) of adoption on a form prescribed and furnished by the state registrar. The report shall contain evidence from sources determined to be reliable by the court as to the true or probable date and place of birth and parentage of such person; shall provide information necessary to establish a new certificate of birth for the person adopted; and shall identify the order of adoption and be certified by the clerk of the court. Upon receipt by the state registrar of vital statistics of the report of adoption, the state registrar of vital statistics shall make and file a new birth certificate for the child when requested to do so by the court decreeing the adoption, the adoptive parents, or the adopted person. The new birth certificate shall show the true or probable foreign country (and city, town, village or other local designation, if known) of birth and the true or probable date of birth as established by the court and shown on the court report of adoption, the child's new name and parentage as stated in the report of adoption, and any other necessary facts as required by the state registrar. This birth certificate shall not be evidence of United States citizenship. The form and content of the certificate of foreign birth shall be established by the director.



(b) All records and information specified in this section other than a new birth certificate issued hereunder, and all records, files and information of any court in this state relating to adoption proceedings, shall not be open to inspection except as provided in section 39-259A, Idaho Code, or upon the order of a court of record of this state; provided however, that the provisions of section 16-1616, Idaho Code, to the contrary notwithstanding, any probate court, or the judge thereof, may furnish a certified copy of a decree of adoption to any duly authorized agency of the United States or the state of Idaho without procuring any prior court order therefor.

(c) The report of adoption shall, within fifteen (15) days after becoming final, be recorded by the clerk of the court with the vital statistics unit in the state department of health and welfare.

(d) Whenever an adoption decree is amended, annulled or rescinded, the clerk of the court shall forward a certified copy of the amendment, annulment or rescindment to the vital statistics unit in accordance with the time provisions in subsection (c) of this section. Unless otherwise directed by the court, the vital statistics unit shall amend the certificate of birth upon receipt of a certified copy of an amended decree of adoption. Upon receipt of a certified copy of a decree of annulment or rescindment of adoption, the Idaho birth certificate shall be removed from the file and along with the decree of annulment or rescindment shall be placed in the sealed file for that person. Such sealed file shall not be subject to inspection except upon order of a court of record of this state.

#### History.

I.C., § 39-259A, as added by 1982, ch. 122, § 1, p. 348; am. and redesign. 1983, ch. 7, § 19,

p. 23; am. 1985, ch. 59, § 3, p. 112; am. 1988, ch. 25, § 1, p. 31; am. 2005, ch. 391, § 54, p. 1263.

### STATUTORY NOTES

#### Cross References.

Adoption of children, § 16-1501 et seq.

#### Prior Laws.

Former § 39-259, which comprised S.L. 1949, ch. 72, § 19, p. 117, was repealed by S.L. 1959, ch. 104, § 4.

#### Compiler's Notes.

This section was formerly compiled as § 39-259A.

Former § 39-259 was amended and redesignated as § 39-257 by S.L. 1983, ch. 7, § 17.

The words enclosed in parentheses so appeared in the law as enacted.

**39-259A. Voluntary adoption registry for providing limited access to birth information of adult adoptees.** — (a) The state registrar of vital statistics shall establish and maintain a confidential list of qualified adult adoptees who have presented a consent regarding the release of identifying information about themselves. Any consent by a qualified adult adoptee shall be accompanied by the adoptee's desired method of notification in the event that a match occurs; however, the state shall not incur costs of notification in excess of that part of the fee charged to the applicant for the purpose of notification. Any consent shall also indicate whether the qualified adult adoptee desires release of his identifying information if a match occurs after his death. The qualified adult adoptee may revise his consent with respect to change of address or method of notification. Any name and accompanying information shall be removed from the list upon the verified written request of the listed adoptee. The registrar shall maintain a closed



record of such list and accompanying information, except as provided in accordance with the provisions of this section.

(b) The state registrar of vital statistics shall establish and maintain a confidential list of qualified birthparents who have presented a consent regarding the release of identifying information about themselves. Any consent by a qualified birthparent shall be accompanied by the birthparent's desired method of notification in the event that a match occurs; however, the state shall not incur costs of notification in excess of that part of the fee charged to the applicant for the purpose of notification. Any consent shall also indicate whether the qualified birthparent desires release of his identifying information if a match occurs after his death. The qualified birthparent may revise his consent with respect to change of address or method of notification. Any name and accompanying information shall be removed from the list upon the verified written request of the listed birthparent. The registrar shall maintain a closed record of such list and accompanying information, except as provided in accordance with the provisions of section 39-258(h), and subsections (b), (c) and (d) of section 39-259, Idaho Code. Any birthparent who, in terminating his parental rights, used an alias and this alias is listed in the original sealed birth certificate, may also file a consent with the registry. A birthparent shall not be matched with a qualified adult adoptee without the consent of the other birthparent unless:

- (1) There is only one (1) birthparent listed on the birth certificate; or
- (2) The other birthparent is deceased; or
- (3) The other birthparent is unable to be located by the department of health and welfare or by a licensed child placement agency designated by the department of health and welfare, after a search, which shall consist, at a minimum, of a certified letter to the other birthparent at the last known address and a newspaper advertisement made in the county of the last known address; such search to be completed within ninety (90) days and the cost of said search to be fully funded and completed by the birthparent seeking a match; said search to be in accordance with the rules and regulations promulgated by the department.

(c) The state registrar of vital statistics shall establish and maintain a confidential list of qualified adult birth siblings who have presented a consent regarding the release of identifying information about themselves. Any consent by a qualified birth sibling shall be accompanied by the birth sibling's desired method of notification in the event that a match occurs; however, the state shall not incur costs of notification in excess of that part of the fee charged to the applicant for the purpose of notification. Any consent shall also indicate whether the qualified birth sibling desires release of his identifying information if a match occurs after his death. The qualified birth sibling may revise his consent with respect to change of address or method of notification. Any name and accompanying information shall be removed from the list upon the verified written request of the listed birth sibling. The registrar shall maintain a closed record of such list and accompanying information, except as provided in accordance with the provisions of sections 39-258(h) and 39-259(b), Idaho Code, and this section.

(d) The state registrar shall maintain a confidential list of relatives of deceased qualified adult adoptees and relatives of deceased qualified

birthparents who have presented a consent regarding the release of identifying information about themselves. Any consent by such relative shall be accompanied by the person's desired method of notification in the event that a match occurs; however, the state shall not incur costs of notification in excess of that part of the fee charged to the applicant for the purpose of notification. Such relative may revise his consent with respect to change of address or method of notification. Any name and accompanying information shall be removed from the list upon the verified written request of the listed relative. The state registrar shall maintain a closed record of such list and accompanying information, except as provided in accordance with the provisions of this section.

(e) The state registrar shall regularly review the lists provided for in subsections (a), (b), (c) and (d) of this section, and any other nonsealed administrative files or records within the office to determine if there is a match. If it appears that a match has occurred, then and only then is the registrar authorized to proceed to confirm the match through recourse to sealed documents on file in the office of the registrar. When a match is confirmed, the registrar shall notify each party, by its designated method only, prior to an exchange of identifying information. Nothing in this section shall be construed to allow any state or local governmental department, agency, or institution, or any employee thereof, to solicit any consent for the release of identifying information.

(f) When a match is made and both the adopted person and the birthparent or parents, submit to the state registrar a notarized request for a copy of the original birth record of the adopted person, the state registrar shall issue such copy, marked "NOT FOR OFFICIAL USE", at the usual cost of certificate copies.

(g) Nothing in this section shall be construed to allow the registrar to issue a copy of the original birth certificate to any registrant, except as provided for in subsection (f) of this section.

(h) Except upon order of a court of record of this state and notwithstanding any other provision of law, the information acquired by the registry shall not be disclosed under its public records law, sunshine or freedom of information legislation, rules or practice.

(i) The initial fee to be charged each person requesting that his name be placed on the list provided for in subsections (a), (b), (c) and (d) of this section, and for the services provided by the registrar in establishing and implementing the registry pursuant to this section, shall be ten dollars (\$10.00). Except for the cost of the search described in subsection (b)(3) of this section, the fee shall cover all direct and indirect costs incurred pursuant to this section. The state board of health and welfare shall annually review the fees and expenses incurred pursuant to this section and, as needed, adjust the fees charged to cover the expenses of administering the provisions of this section.

**History.**

I.C., § 39-259A, as added by 1985, ch. 59,

§ 4, p. 112; am. 1990, ch. 213, § 36, p. 480;  
am. 1993, ch. 315, § 2, p. 1166.



## STATUTORY NOTES

**Compiler's Notes.**

Former § 39-259A was amended and redesignated as § 39-259 by S.L. 1983, ch. 7, § 19.

**39-260. Registration of deaths and stillbirths.** — (1) A certificate of each death which occurs in this state shall be filed with the local registrar of the district in which the death occurs, or as otherwise directed by the state registrar, within five (5) days after the occurrence. However, the board shall, by rule and upon such conditions as it may prescribe to assure compliance with the purposes of the vital statistics act, provide for the filing of death certificates without medical certifications of cause of death in cases in which compliance with the applicable prescribed period would result in undue hardship; but provided, however, that medical certifications of cause of death shall be provided by the certifying physician, physician assistant, advanced practice professional nurse or coroner to the vital statistics unit within fifteen (15) days from the filing of the death certificate. No certificate shall be deemed complete until every item of information required shall have been provided or its omission satisfactorily accounted for. When death occurs in a moving conveyance in the United States and the body is first removed from the conveyance in this state, the death shall be registered in this state and the place where the body is first removed shall be considered the place of death. When a death occurs on a moving conveyance while in international airspace or in a foreign country or its airspace and the body is first removed from the conveyance in this state, the death shall be registered in this state but the certificate shall show the actual place of death insofar as can be determined. If the place of death is unknown but the dead body is found in this state, the certificate of death shall be completed and filed in accordance with this section. The place where the body is found shall be shown as the place of death. If the date of death is unknown, it shall be determined by approximation.

The person in charge of interment or of removal of the body from the district shall be responsible for obtaining and filing the certificate. Said person shall obtain the required information from the following persons, over their respective signatures:

(a) Personal data shall be supplied by the person best qualified to supply them; and

(b) Except as otherwise provided, medical data shall be supplied by the physician, physician assistant or advanced practice professional nurse who attended the deceased during the last illness, who shall certify to the cause of death according to his best knowledge, information and belief within seventy-two (72) hours from time of death. In the absence of the attending physician, physician assistant or advanced practice professional nurse or with said person's approval the certificate may be completed and signed by said person's associate, who must be a physician, physician assistant or advanced practice professional nurse, the chief medical officer of the institution in which death occurred, or the physician who performed an autopsy upon the decedent, provided such individual has access to the medical history of the case, views the deceased at or after death, and death is due to natural causes.



(2) The person in charge of interment or of removal of the body from the district shall refer the following cases to the coroner who shall make an immediate investigation, supply the necessary medical data, and certify to the cause of death:

- (a) When no physician, physician assistant or advanced practice professional nurse was in attendance during the last illness of the deceased;
- (b) When the circumstances suggest that the death occurred as a result of other than natural causes; or
- (c) When death is due to natural causes and the physician, physician assistant or advanced practice professional nurse who attended the deceased during the last illness or said person's designated associate who must be a physician, physician assistant or advanced practice professional nurse, is not available or is physically incapable of signing.

(3) When a death is presumed to have occurred within this state but the body cannot be located, a death certificate may be prepared by the state registrar upon receipt of an order of a court of record of this state, which shall include the finding of facts required to complete the death certificate. Such a death certificate shall be marked "presumptive" and shall show on its face the date of registration and shall identify the court and the date of decree.

(4) Each stillbirth, defined as a spontaneous fetal death of twenty (20) completed weeks gestation or more, based on a clinical estimate of gestation, or a weight of three hundred fifty (350) grams (twelve and thirty-five hundredths (12.35) ounces) or more, which occurs in this state shall be registered on a certificate of stillbirth within five (5) days after delivery with the local registrar of the district in which the stillbirth occurred. All induced terminations of pregnancy shall be reported in the manner prescribed in section 39-261, Idaho Code, and shall not be reported as stillbirths. No certificate shall be deemed complete until every item of information required shall have been provided or its omission satisfactorily accounted for.

(a) When a stillbirth occurs in an institution, the person in charge of the institution or a designated representative shall prepare the certificate, obtain the signature of the physician, physician assistant or advanced practice professional nurse in attendance, except as otherwise provided in subsection (5) of this section, who shall provide the medical data, and forward the certificate to the mortician or person acting as such. In the absence of the attending physician, physician assistant or advanced practice professional nurse or with said person's approval the certificate may be completed and signed by said person's associate, who must be a physician, physician assistant or advanced practice professional nurse, the chief medical officer of the institution in which the stillbirth occurred, or the physician who performed an autopsy on the stillborn fetus, provided such individual has access to the medical history of the case and views the fetus at or after stillbirth. The mortician or person acting as such shall provide the disposition information and file the certificate with the local registrar.

(b) When a stillbirth occurs outside an institution, the mortician or person acting as such shall complete the certificate, obtain the medical data from and signature of the attendant at the stillbirth, except as

otherwise provided in subsection (5) of this section, and file the certificate. If the attendant at or immediately after the stillbirth is not a physician, physician assistant or advanced practice professional nurse, the coroner shall investigate and sign the certificate of stillbirth.

(c) When a stillbirth occurs in a moving conveyance in the United States and the stillborn fetus is first removed from the conveyance in this state, the stillbirth shall be registered in this state and the place where the stillborn fetus is first removed shall be considered the place of stillbirth. When a stillbirth occurs in a moving conveyance while in international airspace or in a foreign country or its airspace and the stillborn fetus is first removed from the conveyance in this state, the stillbirth shall be registered in this state but the certificate shall show the actual place of stillbirth insofar as can be determined.

(d) When a stillborn fetus is found in this state and the place of stillbirth is unknown, it shall be reported in this state. The place where the stillborn fetus was found shall be considered the place of stillbirth.

(e) The name of the father shall be entered on the certificate of stillbirth as provided by section 39-255, Idaho Code.

(5) The person responsible for the preparation or completion of the stillbirth certificate as stated in subsections (4)(a) and (b) of this section shall refer the following cases to the coroner who shall make an immediate investigation, supply the necessary medical data and certify to the cause of stillbirth:

(a) When the circumstances suggest that the stillbirth occurred as a result of other than natural causes, excepting legally induced abortions, as defined by section 39-241, Idaho Code; or

(b) When death is due to natural causes and the physician, physician assistant or advanced practice professional nurse in attendance at or immediately after the stillbirth or said person's designated associate is not available or is physically incapable of signing.

#### **History.**

1949, ch. 72, § 18, p. 117; am. 1972, ch. 111, § 1, p. 226; am. and redesign. 1983, ch. 7, § 20,

p. 23; am. 1995, ch. 28, § 2, p. 42; am. 2002, ch. 277, § 2, p. 809; am. 2007, ch. 244, § 1, p. 719.

### **STATUTORY NOTES**

#### **Cross References.**

Congenital syphilis, reports of stillbirths to state whether required tests made, § 39-1005.

Vital statistics act, § 39-240 and notes thereto.

#### **Amendments.**

The 2007 amendment, by ch. 244, throughout the section, inserted "physician assistant, advanced practice professional nurse," or similar language; in subsections (1)(b) and (4)(a), twice substituted "person's" for "physician's," and inserted "who must be a"; added subsection (2)(c) and made related redesignations; in subsections (4)(a) and (4)(b), substituted "subsection (5) of this section" for "section 39-

260(e), Idaho Code"; added the introductory paragraph in subsection (5); in subsection (5)(a), deleted "the local registrar shall refer the case to the coroner in the county where the stillbirth occurred. Said coroner shall make an immediate investigation, supply the necessary medical data, and certify to the cause of stillbirth" from the end; and added subsection (5)(b).

#### **Compiler's Notes.**

This section was formerly compiled as § 39-258.

Former § 39-260 was amended and redesignated as § 39-268 by S.L. 1983, ch. 7, § 30.

The words in parentheses so appeared in the law as enacted.

## JUDICIAL DECISIONS

**Admissibility.**

As an exception to the hearsay rule, a properly filed certificate of death, or a copy thereof certified by the state registrar, is

prima facie evidence of the facts stated therein. *Corey v. Wilson*, 93 Idaho 54, 454 P.2d 951 (1969).

## DECISIONS UNDER PRIOR LAW

**Admissibility.**

A certified copy of a death certificate made by a physician and also a certified copy of an attending physician's report of accident to the industrial accident board (now industrial commission) under the workers' compensation law were admissible as evidence and were prima facie evidence of the contents

thereof. *Hillman v. Utah Power & Light Co.*, 56 Idaho 67, 51 P.2d 703 (1935).

A statement made by the deceased to his physician as a part of the history of the case as to how the injury was received was admissible. *Hillman v. Utah Power & Light Co.*, 56 Idaho 67, 51 P.2d 703 (1935).

## RESEARCH REFERENCES

**Am. Jur.** — 39 Am. Jur. 2d, Health, § 108.

**C.J.S.** — 39 C.J.S., Health and Environment, § 74.

**39-260A. Transportation of dead human bodies. [Repealed.]**

## STATUTORY NOTES

**Compiler's Notes.**

This section, which comprised 1949, ch. 72, § 20A, as added by 1953, ch. 242, § 1, p. 365;

am. 1967, ch. 180, § 1, p. 598; am. 1974, ch. 23, § 69, p. 633, was repealed by S.L. 1983, ch. 7, § 21.

**39-261. Induced abortion reporting forms — Compilations. —**

(a) The vital statistics unit shall establish an induced abortion reporting form, which shall be used for the reporting of every induced abortion performed in this state. However, no information shall be collected which would identify the woman who had the abortion. Such form shall be prescribed by the department and shall include as a minimum the items required by the standard reporting form as recommended by the national center for health statistics, of the United States department of health and human services.

The completed form shall be filed by the attending physician and sent to the vital statistics unit within fifteen (15) days after the end of each reporting month. The submitted form shall be an original, typed or written legibly in durable ink, and shall not be deemed complete until every item of information required shall have been provided or its omission satisfactorily accounted for. Carbon copies shall not be acceptable.

(b) The department of health and welfare shall prepare and keep on permanent file compilations of the information submitted on the induced abortion reporting forms pursuant to such rules and regulations as established by the department of health and welfare, which compilations shall be a matter of public record.



**History.**

I.C., § 39-273, as added by 1977, ch. 163,

§ 1, p. 424; am. and redesign. 1983, ch. 7, § 22, p. 23.

**STATUTORY NOTES**

**Compiler's Notes.**

This section was formerly compiled as § 39-273.

Former § 39-261 was amended and redesignated as § 39-267 by § 29 of S.L. 1983, ch. 7.

For further information on the national center for health statistics, see <http://www.cdc.gov/nchs/>.

**39-262. Registration of marriage — Marriage certificates filed. —** Every person who performs a marriage ceremony shall prepare and sign a certificate of marriage in duplicate, one (1) of which shall be given to the parties and the other filed by said person within ten (10) days after the ceremony with the county recorder. Every county recorder shall forward to the state registrar on or before the 15th day of each calendar month the certificates of marriage which were filed with said recorder during the preceding calendar month. The form of certificate of marriage shall be prescribed by the board, in accordance with the provisions of sections 32-401 and 32-402, Idaho Code. No certificate shall be deemed complete until every item of information required shall have been provided or its omission satisfactorily accounted for.

**History.**

1949, ch. 72, § 27, p. 117; am. and redesign. 1983, ch. 7, § 24, p. 23.

**STATUTORY NOTES**

**Cross References.**

Marriage licenses, § 32-401 et seq.

**Prior Laws.**

Former § 39-262, which comprised 1959, ch. 104, § 5, p. 221, was repealed by S.L. 1983, ch. 7, § 23.

**Compiler's Notes.**

This section was formerly compiled as § 39-267.

**39-263. Marriage license fees. —** Every county recorder shall be paid a fee, to be established by regulations adopted by the board, for each marriage certificate recorded with said recorder and forwarded to the state registrar. The recording fee shall be as provided by section 31-3205, Idaho Code.

**History.**

1949, ch. 72, § 28, p. 117; am. and redesign.

1983, ch. 7, § 25, p. 23; am. 1984, ch. 29, § 3, p. 50; am. 1989, ch. 12, § 1, p. 13.

**STATUTORY NOTES**

**Compiler's Notes.**

This section was formerly compiled as § 39-268.

Former § 39-263 was amended and redesignated as § 39-274 by § 36 of S.L. 1983, ch. 7.

**39-264. Registration of persons authorized to perform marriage ceremony. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which was formerly compiled as § 39-270, comprised 1949, ch. 72, § 30, p. 117; am. and redesign. 1983, ch. 7, § 26, p. 23, was repealed by S.L. 1992, ch. 37, § 1.

Former § 39-264 was amended and redesignated as § 39-270 by § 32 of S.L. 1983, ch. 7.

**39-265. Registration of divorces — Annulments of marriage. —**

(a) A certificate of each divorce or annulment granted by any court in this state shall be filed by the clerk of the court with the vital statistics unit and shall be registered if it has been completed and filed in accordance with this chapter. The certificate shall be prepared by the petitioner or the petitioner's legal representative on a form furnished by the state registrar and shall be presented to the clerk of the court with the petition. In all cases the completed certificate shall be prerequisite to the granting of the final decree. No certificate shall be deemed complete until every item of information required shall have been provided or its omission satisfactorily accounted for.

(b) Immediately after the decree becomes final, the certificate shall be forwarded by the clerk to the state registrar on the 15th day of the calendar month next succeeding.

**History.**

1949, ch. 72, § 29, p. 117; am. and redesign. 1983, ch. 7, § 27, p. 23.

**STATUTORY NOTES****Compiler's Notes.**

This section was formerly compiled as § 39-269.

Former § 39-265 was amended and redesignated as § 39-271 by § 33 of S.L. 1983, ch. 7.

**39-266. Fee for court clerk. —** The clerk of the court shall be paid a fee for each certificate forwarded by the clerk to the state registrar in accordance with the provisions of this chapter and regulations of the board. Said fee to be collected as a part of the court costs and be assessed by the court according to law. Said fee to be established by regulations adopted by the board.

**History.**

1949, ch. 72, § 11, p. 117; am. and redesign. 1983, ch. 7, § 28, p. 23.

**STATUTORY NOTES****Compiler's Notes.**

This section was formerly compiled as § 39-251.

Former § 39-266 was amended and redesignated as § 39-273 by § 35 of S.L. 1983, ch. 7.

**39-267. Delayed registration.** — Any certificate required to be filed under this chapter accepted for filing after the time prescribed by the board shall be filed in accordance with the minimum standards prescribed by the national agency in charge of vital statistics.

(1) If a delayed certificate of birth is rejected under the provisions prescribed, a petition signed and sworn to by the petitioner may be filed with a court of competent jurisdiction for an order establishing a record of the date and place of birth and the parentage of the person whose birth is to be registered. An order entered following the procedure established in section 39-278, Idaho Code, shall be acceptable evidence for establishing a delayed certificate of birth in the vital statistics unit.

(2) If a delayed certificate of death is rejected under the provisions prescribed, a petition signed and sworn to by the petitioner may be filed with a court of competent jurisdiction for an order establishing a record of the date and place of death. An order entered following the procedure established in section 39-278, Idaho Code, shall be acceptable evidence for establishing a delayed certificate of death.

**History.**

1949, ch. 72, § 21, p. 117; am. and redesign.

1983, ch. 7, § 29, p. 23; am. 2010, ch. 78, § 2, p. 129.

**STATUTORY NOTES**

**Amendments.**

The 2010 amendment, by ch. 78, redesignated the subsections numerically; and in the last sentence in each, substituted "An order entered following the procedure established in section 39-278, Idaho Code" for "Such order."

**Compiler's Notes.**

This section was formerly compiled as § 39-261.

Former § 39-267 was amended and redesignated as § 39-262 by § 24 of S.L. 1983, ch. 7.

**39-268. Authorization for final disposition.** — (1) The mortician or person acting as such who first assumes possession of a dead body or stillborn fetus shall make a written report to the registrar of the district in which death or stillbirth occurred or in which the body or stillborn fetus was found within twenty-four (24) hours after taking possession of the body or stillborn fetus, on a form prescribed and furnished by the state registrar and in accordance with rules promulgated by the board. Except as specified in subsection (2) of this section, the written report shall serve as permit to transport, bury or entomb the body or stillborn fetus within this state, provided that the mortician or person acting as such shall certify that the physician, physician assistant or advanced practice professional nurse in charge of the patient's care for the illness or condition which resulted in death or stillbirth has been contacted and has affirmatively stated that said physician, physician assistant or advanced practice professional nurse or the designated associate according to section 39-260(1)(b) or (4)(a), Idaho Code, will sign the certificate of death or stillbirth.

(2) The written report as specified in subsection (1) of this section shall not serve as a permit to:

- (a) Remove a body or stillborn fetus from this state;
- (b) Cremate the body or stillborn fetus; or



(c) Make disposal or disposition of any body or stillborn fetus in any manner when inquiry is required under chapter 43, title 19, Idaho Code, or section 39-260(2) or (5), Idaho Code.

(3) In accordance with the provisions of subsection (2) of this section, the mortician or person acting as such who first assumes possession of a dead body or stillborn fetus shall obtain an authorization for final disposition prior to final disposal or removal from the state of the body or stillborn fetus. The physician, physician assistant, advanced practice professional nurse or coroner responsible for signing the death or stillbirth certificate shall authorize final disposition of the body or stillborn fetus, on a form prescribed and furnished by the state registrar. If the body is to be cremated, the coroner must also give additional authorization. In the case of stillbirths, the hospital may dispose of the stillborn fetus if the parent(s) so requests; authorization from the coroner is not necessary unless the coroner is responsible for signing the certificate of stillbirth.

(4) When a dead body or stillborn fetus is transported into the state, a permit issued in accordance with the law of the state in which the death or stillbirth occurred or in which the body or stillborn fetus was found shall authorize the transportation and final disposition within the state of Idaho.

(5) A permit for disposal shall not be required in the case of a dead fetus of less than twenty (20) weeks gestation and less than three hundred fifty (350) grams or twelve and thirty-five hundredths (12.35) ounces where disposal of the fetal remains is made within the institution where the delivery of the dead fetus occurred.

#### History.

1949, ch. 72, § 20, p. 117; am. 1972, ch. 123,

§ 1, p. 243; am. and redesign. 1983, ch. 7, § 30, p. 23; am. 2007, ch. 244, § 2, p. 719.

### STATUTORY NOTES

#### Cross References.

Cemeteries, Title 27, Idaho Code.

Embalmers' registration and licenses, § 54-1101 et seq.

#### Amendments.

The 2007 amendment, by ch. 244, redesignated the sections; in subsections (1) and (3), inserted "physician assistant or advanced practice professional nurse," or similar language; in subsection (1), substituted "rules" for "regulations," updated an internal refer-

ence, and near the end, substituted "designated associate" for "physician's designate," and corrected the section references; updated the reference in paragraph (2)(c); and updated an internal reference in subsection (3).

#### Compiler's Notes.

This section was formerly compiled as § 39-260.

Former § 39-268 was amended and redesignated as § 39-263 by S.L. 1983, ch. 7, § 25.

### RESEARCH REFERENCES

**Am. Jur.** — 22A Am. Jur. 2d, Dead Bodies, §§ 39, 40.

**C.J.S.** — 39A C.J.S., Health and Environment, § 75.

**39-269. Disinterment — Rules.** — No body or stillborn fetus shall be disinterred within the state of Idaho except upon a permit granted by the state registrar of vital statistics. The forms of disinterment permits shall be prepared by the state registrar. Disinterment and removal must be done under the personal supervision of a licensed mortician, and only upon

verified application of the person or persons having the highest authority under the provisions of section 54-1142, Idaho Code. Only such persons as are actually necessary shall be present. The coffin shall not be opened either at place of disinterment or place of destination, except special permit be issued by the state registrar. And in case of disinterment of bodies dead by reason of contagious and infectious diseases, as shown by the certificate of death given by the certifying physician or coroner, the sexton and all other persons engaged in such removal or being present shall immediately thereafter change and disinfect their clothing and properly disinfect their hands, head and face, provided, that such disinterment may also be governed by rules promulgated by the state board of health and welfare and a synopsis of the same shall be printed on the back of every permit. In case of any contagious and infectious disease where remains are to be shipped to points in other states, permission must first be obtained from the state health officer of such state. The state registrar may also issue a special disinterment permit for legal purposes. This permit for legal purposes shall be granted only upon application of a prosecuting attorney, the attorney general of this state, or the coroner of the county in which the body is interred, stating therein such facts which make it evident to the state registrar that the ends of justice require that disinterment be permitted. Such special disinterment for legal purposes shall be governed by rules promulgated by the state board of health and welfare and a synopsis of the same shall be printed on the back of every such special disinterment permit for legal purposes. Bodies in a receiving vault when prepared by a licensed mortician shall not be regarded as disinterred bodies until after the expiration of thirty (30) days.

**History.**

C.S., § 1633a, as added by 1923, ch. 89,  
§ 1, p. 101; I.C.A., § 38-210; am. 1974, ch. 23,

§ 59, p. 633; am. and redesign. 1983, ch. 7,  
§ 31, p. 23; am. 1994, ch. 105, § 5, p. 234; am.  
2006, ch. 109, § 1, p. 302.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

**Amendments.**

The 2006 amendment, by ch. 109, inserted  
“and only upon verified application of the  
person or persons having the highest author-  
ity under the provisions of section 54-1142,  
Idaho Code” at the end of the third sentence.

**Compiler’s Notes.**

This section was formerly compiled as § 39-  
211.

Former § 39-269 was amended and redesi-  
gnated as § 39-265 by S.L. 1983, ch. 7, § 27.

**RESEARCH REFERENCES**

**Am. Jur.** — 22A Am. Jur. 2d, Dead Bodies,  
§ 50 et seq.

**A.L.R.** — Disinterment in criminal cases.  
63 A.L.R.3d 1294.

**39-270. Disclosure of information.** — (a) Certificates and records in the custody of the state registrar shall be open to inspection subject to the provisions of this chapter and the rules of the board, the provisions of section 9-302, Idaho Code, to the contrary notwithstanding; and it shall be unlawful for any state or local official or employee under this chapter to disclose any



data contained in the records, except as authorized by this chapter and the rules of the board.

(b) A complete copy, or any part of a certificate, may be issued to any applicant who can show direct and tangible interest in the record for which he applies. A complete copy, or any part of a certificate, shall be issued upon request to a state, federal or local public agency for child support enforcement purposes pursuant to chapters 10, 11 and 12, title 7, Idaho Code, and sections 16-1628, 20-524, 32-710A, and 56-203, Idaho Code, or for the purpose of investigation of fraud related to benefit payments. Subject to such provisions as the board may prescribe, data contained on records may be used by federal, state or municipal agencies for the purpose of verification of data.

(c) As provided in chapter 3, title 9, Idaho Code, data contained on records may be used for research, public health or statistical purposes. No lists of registration shall be compiled for public use.

(d) The manner of keeping local records and the use thereof shall be prescribed by the board, in keeping with the provisions of this section.

(e) When one hundred (100) years have elapsed after the date of birth, or fifty (50) years have elapsed after the date of death, stillbirth, marriage or divorce, the records of these events in the custody of the state registrar shall become public records and information shall be made available in accordance with chapter 3, title 9, Idaho Code.

#### **History.**

1949, ch. 72, § 24, p. 117; am. 1978, ch. 73, § 1, p. 147; am. and redesign. 1983, ch. 7, § 32, p. 23; am. 1985, ch. 250, § 1, p. 583; am. 1990,

ch. 213, § 37, p. 480; am. 1993, ch. 315, § 3, p. 1166; am. 2004, ch. 23, § 8, p. 25; am. 2005, ch. 391, § 55, p. 1263.

### **STATUTORY NOTES**

#### **Compiler's Notes.**

This section was formerly compiled as § 39-264.

Former § 39-270 was amended and redesignated as § 39-264 by § 26 of S.L. 1983, ch. 7 and was subsequently repealed by § 1 of S.L. 1992, ch. 37.

Section 9-302, referred to in subsection (a) of this section, was repealed by S.L. 1990, ch. 213, § 2, effective July 1, 1990. Present com-

parable provisions may be found in §§ 9-337 to 9-350.

#### **Effective Dates.**

Section 111 of S.L. 1990, ch. 213 as amended by § 16 of S.L. 1991, ch. 329 provided that §§ 3 through 45 and 48 through 110 of the act should take effect July 1, 1993 and that §§ 1, 2, 46 and 47 should take effect July 1, 1990.

### **JUDICIAL DECISIONS**

#### **Public Information.**

This section only limits disclosure of information compiled by the state statistics unit and held in custody by the state registrar; where the result of the blood-alcohol test performed on the accident victim was in the custody of the county coroner, the physician

performing the autopsy, and the lab technicians who performed the blood-alcohol content tests, it was public information in the hands of those individuals, and this section did not prevent its disclosure at the wrongful death trial. *Stattner v. City of Caldwell*, 111 Idaho 714, 727 P.2d 1142 (1986).

**39-271. Records of institutions.** — Every person in charge of an institution, public or private, to which persons resort for treatment of diseases, confinements, or are committed by law, shall record all the



personal and statistical particulars relative to those persons admitted or confined to their institutions that are required on the forms or the certificates prescribed by the board. The record shall be made by them at the time of admission of the patients and at such other times as may be required. The personal and statistical particulars and information shall be obtained from the individuals themselves, if it is practicable to do so, and when they can not be so obtained, they shall be secured in as complete a manner as possible from relatives, friends or other persons acquainted with the facts.

**History.**

1949, ch. 72, § 25, p. 117; am. and redesign.  
1983, ch. 7, § 33, p. 23.

**STATUTORY NOTES****Compiler's Notes.**

This section was formerly compiled as § 39-265.

Former § 39-271 was amended and redesignated as § 39-276 by § 38 of S.L. 1983, ch. 7.

**39-272. Duties to provide information.** — For the purposes of compilation of the vital record, any person having knowledge of the facts shall furnish to the state registrar such information as they may possess regarding any birth, death, stillbirth, marriage or divorce.

**History.**

I.C., § 39-272, as added by 1983, ch. 7, § 34, p. 23.

**STATUTORY NOTES****Compiler's Notes.**

Former § 39-272 was amended and redesignated as § 39-240 by § 1 of S.L. 1983, ch. 7.

**39-273. Penalties.** — (a) The following acts, if committed unlawfully, purposely and with the intent to deceive, shall be felonies punishable by a fine of not more than five thousand dollars (\$5,000) or imprisonment of not more than five (5) years, or both:

- (1) furnishing false or fraudulent information affecting any certificate, record or report required by this chapter; or
- (2) making, counterfeiting, altering, amending or mutilating of any certificate, record or report, or any certified copy of a certificate, record, or report authorized by this chapter; or
- (3) obtaining, possessing, using, selling, or furnishing, or attempting to obtain, possess, use, sell, or furnish, any certificate, record, or report, or certified copy of a certificate, record, or report, which has been unlawfully made, counterfeited, altered, amended, or mutilated; or
- (4) furnishing, selling or using any certificate, record or report, or any certified copy of a certificate, record or report, authorized by this chapter for the purpose of misrepresenting the age or identity of a person or misrepresenting the facts relating to a birth, death or adoption.

(b) The following acts, if committed with knowledge, recklessness or with criminal negligence, shall be misdemeanors punishable by a fine of not more

than one thousand dollars (\$1,000) or imprisonment of not more than one (1) year, or both:

- (1) except where a different penalty is provided by this section, violating any of the provisions of this chapter or the regulations promulgated pursuant to this chapter by the board; or
- (2) neglecting or refusing to perform any of the duties imposed pursuant to this chapter; or
- (3) transporting, accepting for transport, interring, or otherwise disposing of a dead body or stillborn fetus without a permit or other authorization issued in accordance with the provisions of this chapter.

(c) In addition to the other penalties herein prescribed, any employee or officer of the department who knowingly, recklessly or negligently discloses any information in violation of section 39-270, Idaho Code, shall be subject to immediate dismissal from employment.

(d) In addition to any other sanction or penalty authorized by law, the registrar may hereby impose a fine which may not exceed two hundred fifty dollars (\$250) for each violation wherein a physician, hospital administrator or his designee, or other birth attendants, or coroner/deputy, or funeral director/mortician fails to sign a birth, or death or stillbirth certificate within fifteen (15) days of the death or within fifteen (15) days of the birth. Notice of intent to impose such fine must be given by the registrar to the alleged violator. Each day that a violation continues following the giving of the notice of intent may constitute a violation and the registrar may impose a fine which may not exceed fifty dollars (\$50.00) per day. In determining the amount of any fine to be imposed for a violation, the registrar shall consider the following factors:

- (1) the gravity of the violation or extent to which the provisions of the applicable statute or rule were violated;
- (2) any action taken by the alleged violator to correct the violation or assure that the violation will not reoccur;
- (3) any previous violation.

**History.**

1949, ch. 72, § 26, p. 117; am. and redesign. 1983, ch. 7, § 35, p. 23; am. 1994, ch. 323, § 1, p. 1027.

**STATUTORY NOTES**

**Compiler's Notes.**

This section was formerly compiled as § 39-266.

Former § 39-273 was amended and redesignated as § 39-261 by § 22 of S.L. 1983, ch. 7.

**39-274. Evidentiary character of records and copies of records.**

— Any certificate filed in accordance with the provisions of this chapter and the regulations prescribed by the board, or any copy of such records or part thereof, duly certified by the state registrar, shall be prima facie evidence of the facts recited therein.

**History.**

1949, ch. 72, § 23, p. 117; am. and redesign. 1983, ch. 7, § 36, p. 23.

## STATUTORY NOTES

**Compiler's Notes.**

This section was formerly compiled as § 39-263.

## JUDICIAL DECISIONS

**Admissibility of Death Certificate.**

As an exception to the hearsay rule, a properly filed certificate of death, or a copy thereof certified by the state registrar, is prima facie evidence of the facts stated

therein. *Corey v. Wilson*, 93 Idaho 54, 454 P.2d 951 (1969).

**Cited in:** *Haman v. Prudential Ins. Co.*, 91 Idaho 19, 415 P.2d 305 (1966).

**39-275. Applicability.** — The provisions of this chapter also apply to all certificates of birth, death, marriage, divorce, stillbirth, and reports of induced abortion previously received by the vital statistics unit and in the custody of the state registrar.

**History.**

I.C., § 39-275, as added by 1983, ch. 7, § 37, p. 23.

**39-276. Uniformity of interpretation.** — This chapter shall be so construed as to effectuate its general purpose to make uniform the laws of those states which enact it.

**History.**

1949, ch. 72, § 31, p. 117; am. and redesign. 1983, ch. 7, § 38, p. 23.

## STATUTORY NOTES

**Compiler's Notes.**

This section was formerly compiled as § 39-271.

Section 39 of S.L. 1983, ch. 7 read: "The provisions of this act are hereby declared to be

severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

**39-277. Autopsies for suspected Creutzfeldt-Jakob disease.** — When an attending physician or hospital has reported to the department of health and welfare that Creutzfeldt-Jakob disease (CJD) or variant CJD is suspected in relation to a person's death, the state epidemiologist, as designated pursuant to department rule, shall cause to be performed an autopsy of the body, provided a definitive diagnosis has not been made prior to death and provided further that the person or persons having the highest authority under the provisions of section 54-1142, Idaho Code, do not refuse the performance of such autopsy. The state epidemiologist, in ordering an autopsy pursuant to this section, shall require the person or entity performing the autopsy to report the findings of such autopsy to the department of health and welfare.



**History.**

I.C., § 39-277, as added by 2006, ch. 241,  
§ 1, p. 735.

**39-278. Procedure for delayed registration or amendment of vital record.** — (1) Following exhaustion of any administrative procedures or remedies provided by this chapter or by department rule, if an applicant has been denied a request to amend a vital record as provided by section 39-250(5), Idaho Code, or because the item for which an amendment is sought has already been once administratively denied, or if a delayed registration is rejected, including as provided in section 39-267, Idaho Code, the applicant may petition a court of competent jurisdiction of this state for an order establishing the facts necessary to establish or amend a vital record as provided in this section.

(2) The petition must be verified and must allege at least:

(a) If the petition is for a delayed registration of birth:

- (i) That the person for whom the delayed certificate is requested was born in this state;
- (ii) That the person's birth is not registered in another state or country;
- (iii) That a record for the person's birth cannot be found in the state's vital records;
- (iv) That despite diligent efforts the petitioner was unable to obtain the information and evidentiary documents required for the creation and registration of a delayed certificate of birth;
- (v) That the state registrar has issued a final rejection of the application for a delayed certificate of birth; and
- (vi) The following information:
  1. The original full name and sex of the registrant;
  2. The date of birth and place of birth, including the:
    - (A) Facility;
    - (B) City, town or location;
    - (C) County; and
  3. The full maiden name of the mother; and
  4. The full name of the father, unless the registrant was born out of wedlock.

(b) If the petition is for a delayed registration of death or stillbirth:

- (i) That the person for whom the delayed certificate is requested died in this state;
- (ii) That the person's death is not registered in another state or country;
- (iii) That a record for the person's death cannot be found in the state's vital records;
- (iv) That despite diligent efforts the petitioner was unable to obtain the information and evidentiary documents required for the creation and registration of a delayed certificate of death;
- (v) That the state registrar has issued a final rejection of the application for a delayed certificate of death; and
- (vi) The following information:
  1. The full name and sex of the deceased;
  2. The date and place of death, including the:

- (A) Facility;
  - (B) City, town or location;
  - (C) County; and
3. For a stillbirth:
- (A) The full maiden name of the mother; and
  - (B) The full name of the father, unless the mother was not married.
- (c) If the petition is for another amendment to a vital record, in a manner otherwise permitted by department rule:
- (i) The identity of the record registered with the state registrar and the item in the record the petitioner requests to be amended;
  - (ii) The change requested and the purpose of the amendment;
  - (iii) The rule under which the amendment is otherwise permitted; and
  - (iv) That the state registrar has issued a final rejection of the application for the requested amendment and the reason for the rejection.
- (3) The petitioner must attach all evidentiary documents presented to the registrar and the written final letter of denial or rejection from the registrar.
- (4) The petitioner must provide a complete copy of the petition, together with notice of the date, time and place of the hearing, by mailing a copy thereof at least fourteen (14) days before the time set for the hearing, by certified, registered or ordinary first class mail, to the state registrar at the address given in the written final letter of denial or rejection. The state registrar or an authorized representative may appear and present evidence at the hearing.
- (5) If the court finds from the evidence presented that:
- (a) The person for whom a delayed certificate of birth is requested was born in this state, it shall make findings as to:
    - (i) The original full name and sex of the registrant;
    - (ii) The date of birth and place of birth, including the:
      - 1. Facility;
      - 2. City, town or location;
      - 3. County; and
    - (iii) The full maiden name of the mother; and
    - (iv) The full name of the father, unless the registrant was born out of wedlock.
  - (b) The person for whom a delayed certificate of death is requested died in this state, it shall make findings as to:
    - (i) The full name and sex of the deceased; and
    - (ii) The date and place of death, including the:
      - 1. Facility;
      - 2. City, town or location; and
      - 3. County.
  - (c) The person requesting any other amendment to a vital record in a manner otherwise permitted by department rule has established the facts necessary for the amendment and the amendment is otherwise appropriate, it shall make an order amending the item in the vital record as requested.
- (6) The order of the court shall include a description of the evidence presented and the date of the court's action.
- (7) The order of the court shall not alter the fees otherwise required by the registrar for the requested amendment, or the time frames otherwise

provided for the registrar to administratively establish or make the amendment requested.

**History.**

I.C., § 39-278, as added by 2010, ch. 78,  
§ 3, p. 129.

## CHAPTER 3

# ALCOHOLISM AND INTOXICATION TREATMENT ACT

**SECTION.**

- 39-300. Definitions. [Repealed.]
- 39-301. Declaration of policy.
- 39-302. Definitions.
- 39-303. Interagency committee on substance abuse prevention and treatment. [Null and void.]
- 39-303A. Regional advisory committees.
- 39-304. Comprehensive program for treatment.
- 39-305. Standards for public and private treatment facilities — Enforcement procedures — Penalties.

**SECTION.**

- 39-306. Acceptance for treatment — Rules.
- 39-307. Voluntary treatment of alcoholics and drug addicts.
- 39-307A. Protective custody.
- 39-308. Records of alcoholics, intoxicated or addicted persons.
- 39-309. Payment for treatment — Financial ability of patients.
- 39-310. Criminal law limitations.
- 39-311. Rules and regulations.
- 39-312 — 39-316. [Repealed.]

### 39-300. Definitions. [Repealed.]

### STATUTORY NOTES

**Compiler's Notes.**

This section, which comprised I.C., § 39-

300, as added by 1955, ch. 257, § 1, p. 586, was repealed by S.L. 1971, ch. 2, § 1, p. 4.

**39-301. Declaration of policy.** — It is the policy of this state that alcoholics, intoxicated persons or drug addicts may not be subjected to criminal prosecution or incarceration solely because of their consumption of alcoholic beverages or addiction to drugs but rather should be afforded treatment in order that they may lead normal lives as productive members of society.

The legislature hereby finds and declares that it is essential to the health and welfare of the people of this state that action be taken by state government to effectively and economically utilize federal and state funds for alcoholism and drug addiction research, and the prevention and for the treatment and rehabilitation of alcoholics or drug addicts. To achieve this, it is necessary that existing fragmented, uncoordinated and duplicative alcoholism and drug treatment programs be merged into a comprehensive and integrated system for the prevention, treatment and rehabilitation of alcoholics.

The legislature continues to recognize the need for criminal sanctions for those who violate the provisions of the uniform controlled substances act.

**History.**

I.C., § 39-301, as added by 1975, ch. 149,

§ 1, p. 376; am. 1976, ch. 98, § 1, p. 416; am. 1987, ch. 289, § 1, p. 610.



STATUTORY NOTES

Cross References.

Uniform controlled substances act, § 37-2701 et seq.

Prior Laws.

Former § 39-301, which comprised S.L.

1907, § 9, p. 182; am. R.C. § 1095; am. 1909, § 1, p. 153; am. 1913, ch. 140, § 1, p. 495; reen. C.L. § 1095; C.S., § 1655; I.C.A., § 38-301; am. 1955, ch. 257, § 2, p. 586; am. 1965, ch. 212, § 1, p. 486, was repealed by S.L. 1971, ch. 2, § 1, p. 4.

JUDICIAL DECISIONS

Application.

This chapter does not affect offenses involving the operation of a vehicle while intoxicated; therefore, it does not mandate that treatment for alcoholism be provided to a prison inmate. *State v. Puga*, 111 Idaho 874, 728 P.2d 398 (Ct. App. 1986).

This chapter eliminates the status offense of alcoholism and provides a mechanism for treatment. However, in no way does it impose

a requirement to provide treatment for alcoholics convicted of substantive crimes. *State v. Hadley*, 122 Idaho 728, 838 P.2d 331 (Ct. App. 1992).

**Cited in:** *St. Joseph Reg'l Med. Ctr. v. Nez Perce County Comm'rs*, 134 Idaho 486, 5 P.3d 466 (2000).

**39-302. Definitions.** — As used in this chapter, the terms defined in this section shall have the following meanings, unless the context clearly indicates another meaning:

(1) "Addiction" or "alcoholism" means a primary, chronic, neurobiological disease with genetic, psychosocial and environmental factors influencing its development and manifestations. It is characterized by behaviors that include one (1) or more of the following: impaired control over drug or alcohol use, compulsive use, continued use despite harm, and craving.

(2) "Alcoholic" means a person who has the disease of alcoholism, which is characterized by behaviors that include one (1) or more of the following: impaired control over alcohol use, compulsive use, continued use despite harm, and craving.

(3) "Approved private treatment facility" means a private agency meeting the standards prescribed in section 39-305(1), Idaho Code, and approved under the provisions of section 39-305(3), Idaho Code, and rules promulgated by the board of health and welfare pursuant to this chapter.

(4) "Approved public treatment facility" means a treatment agency operating under the provisions of this chapter through a contract with the department of health and welfare pursuant to section 39-304(7), Idaho Code, and meeting the standards prescribed in section 39-305(1), Idaho Code, and approved pursuant to section 39-305(3), Idaho Code, and rules promulgated by the board of health and welfare pursuant to this chapter.

(5) "Department" means the Idaho department of health and welfare.

(6) "Director" means the director of the Idaho department of health and welfare.

(7) "Drug addict" means a person who has the disease of addiction, which is characterized by behaviors that include one (1) or more of the following: impaired control over drug use, compulsive use, continued use despite harm, and craving.

(8) "Incapacitated by alcohol or drugs" means that a person, as a result of the use of alcohol or drugs, is unconscious or has his judgment otherwise so impaired that he is incapable of realizing and making a rational decision with respect to his need for treatment.

(9) "Incompetent person" means a person who has been adjudged incompetent by an appropriate court within this state.

(10) "Interagency committee" means the interagency committee on substance abuse prevention and treatment as provided for in section 39-303, Idaho Code.

(11) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of drugs or alcohol.

(12) "Recovery support services" means those ancillary, nonclinical services needed for a client to maintain substance abuse or addiction recovery. These services may include transportation, childcare, drug testing, safe and sober housing and care management.

(13) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or substances.

(14) "Treatment" means the broad range of emergency, outpatient, intensive outpatient, and inpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological, and social service care, vocational rehabilitation and career counseling, which may be extended to alcoholics and intoxicated persons and/or drug addicts.

#### History.

I.C., § 39-302, as added by S.L. 1975, ch. 149, § 1, p. 376; am. 1987, ch. 289, § 2, p.

610; am. 2006, ch. 407, § 1, p. 1232; am. 2008, ch. 94, § 1, p. 259.

#### STATUTORY NOTES

##### Prior Laws.

Former § 39-302, which comprised S.L. 1907, § 20, p. 182; reen. R.C. & C.L., § 1096; C.S., § 1656; I.C.A., § 38-302; am. 1955, ch. 257, § 3, p. 586; am. 1965, ch. 212, § 2, p. 486, was repealed by S.L. 1971, ch. 2, § 1, p. 4.

##### Amendments.

The 2006 amendment, by ch. 407, added subsections (5) and (11) and renumbered the

remaining subsections accordingly; substituted "this chapter" for "this act" in subsections (7) and (8); and inserted "or drugs" in subsection (9).

The 2008 amendment, by ch. 94, alphabetized the defined terms and added present subsections (1) and (12); rewrote present subsections (2) and (7); and in subsection (14), substituted "intensive outpatient" for "intermediate."

### 39-303. Interagency committee on substance abuse prevention and treatment. [Null and void.]

Null and void, pursuant to S.L. 2006, ch. 407, § 6, effective July 1, 2011.

#### History.

I.C., § 39-303, as added by 2006, ch. 407, § 3, p. 1232; am. 2007, ch. 69, § 2, p. 183,

#### STATUTORY NOTES

##### Cross References.

Administrative director of the courts, § 1-611.

##### Prior Laws.

Former § 39-303, which comprised I.C., § 39-303, as added by 1975, ch. 149, § 1, p.

376; am. 1976, ch. 98, § 2, p. 416; am. 1987, ch. 289, § 3, p. 610; am. 1989, ch. 282, § 1, p. 691, was repealed by S.L. 2006, ch. 407, § 2.

Another former § 39-303, which comprised S.L. 1907, § 21, p. 182; reen. R.C. & C.L., § 1097; C.S., § 1657; I.C.A., § 38-303; am.

1955, ch. 257, § 4, p. 586, was repealed by S.L. 1971, ch. 2, § 1, p. 4.

**39-303A. Regional advisory committees.** — (1) Regional advisory committees that address substance abuse issues shall be established by the department of health and welfare. The regional advisory committees shall be composed of regional directors of the department or their designees, regional substance abuse program staff and representatives of other appropriate public and private agencies. Members shall be appointed by the respective regional directors for terms determined by the regional director. The committees shall meet at least quarterly at the call of the chair, who shall also be appointed by the regional director. The committees shall provide for the coordination of, and exchange of information on, all programs relating to alcoholism and drug addiction, and shall act as liaison among the departments engaged in activities affecting alcoholics and intoxicated persons.

(2) The chairpersons of each regional advisory committee shall collectively meet at least annually and elect one (1) of its members to serve as the regional advisory committees' representative on the interagency committee. Each regional advisory committee shall provide to the regional advisory committees' representative, before each regular meeting of the interagency committee, a report addressing local substance abuse program needs and other information as it pertains to the treatment and prevention of alcoholism and other drug addiction or as required by the chairperson of the interagency committee. The regional advisory committees' representative shall be responsible for communicating information from these reports at each regular meeting of the interagency committee.

**History.**

I.C., § 39-303A, as added by 1989, ch. 282, § 2, p. 691; am. 2006, ch. 407, § 4, p. 1232.

**STATUTORY NOTES**

**Amendments.**

The 2006 amendment, by ch. 407, added the subsection (1) designation; in subsection (1), substituted "that address substance abuse issues shall be established by the department of health and welfare" for "are established" in the first sentence, in the second sentence, added "The regional advisory committees shall be" to the beginning, deleted "a member of the commission on alcohol drug abuse"

following "abuse program staff", inserted "respective", and substituted "directors" for "director"; deleted the last sentence, which formerly read: "The regional advisory committees shall provide to the commission on alcohol-drug abuse information pertaining to local substance abuse program needs and other information as it pertains to the treatment and prevention of alcoholism and other drug addiction"; and added subsection (2).

**39-304. Comprehensive program for treatment.** — The Idaho department of health and welfare is hereby designated as the state substance abuse authority.

(1) The department shall establish a comprehensive and coordinated program for the treatment of alcoholics, intoxicated persons and drug addicts. The interagency committee shall direct the department in the establishment and in the content of this program.

(2) The program shall include:



- (a) Emergency detoxification treatment and medical treatment directly related thereto provided by a facility affiliated with or part of the medical service of a general hospital;
- (b) Inpatient treatment;
- (c) Intensive outpatient treatment;
- (d) Outpatient treatment;
- (e) Community detoxification provided by an approved facility; and
- (f) Recovery support services.

(3) The department shall provide for adequate and appropriate treatment for persons admitted pursuant to section 39-307, Idaho Code. Treatment shall not be provided at a correctional institution except for inmates.

(4) The department shall maintain, supervise, and control all facilities operated by it. The administrator of each such facility shall make an annual report of its activities to the director in the form and manner the director specifies.

(5) All appropriate public and private resources shall be coordinated with and utilized in the program whenever possible.

(6) The department shall prepare, publish and distribute annually a list of all approved public and private treatment facilities.

(7) The department may contract for the use of any facility as an approved public treatment facility if the director considers this to be an effective and economical course to follow.

(8) The program shall include an individualized treatment plan prepared and maintained for each client.

#### **History.**

I.C., § 39-304, as added by S.L. 1975, ch. 149, § 1, p. 376; am. 1987, ch. 289, § 4, p.

610; am. 1989, ch. 282, § 3, p. 691; am. 2006, ch. 407, § 5, p. 1232; am. 2007, ch. 69, § 3, p. 183; am. 2008, ch. 94, § 2, p. 260.

### **STATUTORY NOTES**

#### **Prior Laws.**

Former § 39-304, which comprised R.C., § 1097a, as added by 1909, § 2, p. 153; am. 1913, ch. 140, § 1, subd. 1097a, p. 497; am. 1917, ch. 111, p. 389; reen. C.L., § 1097a; C.S., § 1658; am. 1927, ch. 65, § 1, p. 81; I.C.A., § 38-304; am. 1955, ch. 257, § 5, p. 586, was repealed by S.L. 1971, ch. 2, § 1, p. 4.

#### **Amendments.**

The 2006 amendment, by ch. 407, added the introductory paragraph, and added the second sentence in subsection (1).

The 2007 amendment, by ch. 69, substituted "shall direct the department" for "shall advise the department" in subsection (1).

The 2008 amendment, by ch. 94, rewrote paragraph (2)(c), which formerly read: "Intermediate treatment"; in paragraph (2)(d), deleted "and follow up" preceding "treatment"; and added paragraph (2)(f).

#### **Effective Dates.**

Section 4 of S.L. 2007, ch. 69 declared an emergency. Approved March 13, 2007.

### **JUDICIAL DECISIONS**

#### **Adequate Care.**

Adequate medical care has not been interpreted to require rehabilitation or treatment

for chronic alcoholism. *State v. Hadley*, 122 Idaho 728, 838 P.2d 331 (Ct. App. 1992).

**39-305. Standards for public and private treatment facilities — Enforcement procedures — Penalties.** — (1) The board of health and welfare shall establish standards for approved treatment facilities, which

shall be met in order for a treatment facility to be approved as a public or private treatment facility. The standards shall prescribe the health standards to be met and standards of treatment to be afforded patients.

(2) The department shall periodically inspect approved public and private treatment facilities.

(3) The department shall maintain a list of approved public and private treatment facilities.

(4) Each approved public and private treatment facility shall file with the department any data, statistics, records, and information the department reasonably requires. An approved public or private treatment facility that, without good cause, fails to furnish any data, statistics, records, or information as requested, or that files fraudulent returns thereof, shall be removed from the list of approved treatment facilities.

(5) The board of health and welfare, after holding a hearing, may suspend, revoke, limit, or restrict an approval, or refuse to grant an approval, for failure to meet its standards.

(6) A district court may restrain any violation of this act, review any denial, restriction, or revocation of approval, and grant other relief required to enforce its provisions.

#### History.

I.C., § 39-305, as added by S.L. 1975, ch. 149, § 1, p. 376.

#### STATUTORY NOTES

##### Cross References.

Idaho health planning act, § 39-4901 et seq.

##### Prior Laws.

Former § 39-305, which comprised R.S., § 1153; am. 1903, p. 364, § 1; reen. R.C., § 1112; am. by repeal and substitution R.C., § 1097b, as added by 1909, p. 153, § 2; am. 1913, ch. 140, § 1, p. 497; reen. C.L., § 1097b;

C.S., § 1659; I.C.A., § 38-305; am. 1955, ch. 257, § 6, p. 586, was repealed by S.L. 1971, ch. 2, § 1, p. 4.

##### Compiler's Notes.

The words "this act" in subsection (6) refer to S.L. 1975, ch. 149, § 1, which is compiled as §§ 39-301, 39-302, 39-304 to 39-307, and 39-308 to 39-311.

**39-306. Acceptance for treatment — Rules.** — The board of health and welfare shall adopt rules for the acceptance of persons into the treatment program, considering available treatment resources and facilities, for the purpose of early and effective treatment of alcoholics, intoxicated persons and drug addicts. In establishing the rules the board shall be guided by the following standards:

(1) If possible a patient shall be treated on a voluntary rather than an involuntary basis.

(2) A patient shall be initially assigned or transferred to outpatient or intensive outpatient treatment, unless he is found to require inpatient treatment.

(3) A person shall not be denied treatment solely because he has withdrawn from treatment against medical advice on a prior occasion or because he has relapsed after earlier treatment.

(4) An individualized treatment plan shall be prepared and maintained on a current basis for each patient.

(5) Provision shall be made for a continuum of coordinated treatment services, so that a person who leaves a facility or a form of treatment will have available and utilize other appropriate treatment.

**History.**

I.C., § 39-306, as added by S.L. 1975, ch.

149, § 1, p. 376; am. 1987, ch. 289, § 5, p. 610; am. 2008, ch. 94, § 3, p. 261.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-306, which comprised 1907, p. 182, § 22; reen. R.C., § 1098; am. 1909, p. 153, § 1; am. 1913, ch. 140, § 1, p. 497; reen. C.L., § 1098; C.S., § 1660; I.C.A., § 38-306; am. 1955, ch. 257, § 7, p. 586, was repealed by S.L. 1971, ch. 2, § 1, p. 4.

**Amendments.**

The 2008 amendment, by ch. 94, substituted "intensive outpatient treatment" for "intermediate treatment" in subsection (2).

**39-307. Voluntary treatment of alcoholics and drug addicts. —**

(1) An alcoholic or a drug addict may apply for voluntary treatment directly to any approved public treatment facility. If the proposed patient is a minor or an incompetent person, he, a parent, legal guardian, or other legal representative shall make the application.

(2) Subject to rules adopted by the board of health and welfare, the director or his designee may determine who shall be admitted to an approved public treatment facility.

(3) If a patient receiving inpatient care leaves an approved public treatment facility, he shall be encouraged to consent to appropriate outpatient or intensive outpatient treatment, and the department shall assist in obtaining supportive services and residential facilities.

(4) If a patient leaves an approved public treatment facility, upon the recommendation of departmental staff, the department shall make reasonable provisions for his transportation to another facility or to his home. If he has no home, he shall be assisted in obtaining shelter. If the patient is a minor or an incompetent person, the request for discharge from an inpatient facility shall be made by a parent, legal guardian, or other legal representative or by the minor or incompetent if he was the original applicant.

**History.**

I.C., § 39-307, as added by S.L. 1975, ch.

149, § 1, p. 376; am. 1987, ch. 289, § 6, p. 610; am. 2008, ch. 94, § 4, p. 261.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-307, which comprised 1907, p. 182, § 23; am. R.C., § 1099; am. 1909, p. 153, § 1; am. 1913, ch. 140, § 1, p. 498; compiled and reen. C.L., § 1099; C.S., § 1661; I.C.A., § 38-307; am. 1947, ch. 167, § 1, p. 423; am. 1955, ch. 257, § 8, p. 586, was repealed by S.L. 1971, ch. 2, § 1, p. 4.

**Amendments.**

The 2008 amendment, by ch. 94, inserted "drug" in the section catchline; substituted "drug addict" for "an addict" in the first sentence of subsection (1); and substituted "intensive outpatient" for "intermediate" in subsection (3).

**39-307A. Protective custody. —** (a) An intoxicated or drug addicted person may come voluntarily to an approved public treatment facility for emergency treatment. A person who appears to be intoxicated in a public



place and to be in need of help, if he consents to the proffered help, may be assisted to his home, an approved public treatment facility, an approved private treatment facility, or other health facility by a law enforcement officer.

(b) A person who appears to be incapacitated by alcohol or drugs shall be taken into protective custody by a law enforcement officer and forthwith brought to an approved treatment facility for emergency treatment. If no approved treatment facility is readily available he may be taken to a city or county jail where he may be held until he can be transported to an approved treatment facility, but in no event shall such confinement extend more than twenty-four (24) hours. A law enforcement officer, in detaining the person and in taking him to an approved treatment facility, is taking him into protective custody and shall make every reasonable effort to protect his health and safety. In taking the person into protective custody, the detaining officer may take reasonable steps to protect himself. A taking into protective custody under this section is not an arrest. No entry or other record shall be made to indicate that the person has been arrested or charged with a crime.

(c) A person who comes voluntarily or is brought to an approved treatment facility shall be examined as soon as possible. He may then be admitted as a patient or referred to another health facility. The referring approved treatment facility shall arrange for his transportation.

(d) A person who by examination is found to be incapacitated by alcohol or drugs at the time of his admission or to have become incapacitated at any time after his admission, may not be detained at the facility (1) once he is no longer incapacitated by alcohol or drugs or (2) if he remains incapacitated by alcohol or drugs for more than seventy-two (72) hours after admission as a patient. A person may consent to remain in the facility as long as the person in charge believes appropriate.

(e) If a patient is admitted to an approved treatment facility, his family or next of kin shall be notified as promptly as possible. If an adult patient who is not incapacitated requests that there be no notification, his request shall be respected.

(f) Law enforcement officers, personnel of the department, and personnel of an alcohol or drug treatment facility who act in compliance with this section are acting in the course of their official duty and are not criminally or civilly liable therefor.

(g) If the person in charge of the approved treatment facility determines it is for the patient's benefit, the patient shall be encouraged to agree to further diagnosis and appropriate voluntary treatment.

(h) That any person taken to a seventy-two (72) hour evaluation and treatment facility shall be informed immediately that he has the right to request and take a chemical test in order to ascertain whether he is an intoxicated or addicted person. If the person requests to take the test and the professional person in charge of the facility then determines that the person taken to the facility is not intoxicated or addicted, he shall immediately release him. A record shall be maintained by the facility of the results of the test.

**History.**

I.C., § 39-307A, as added by S.L. 1976, ch. 98, § 3, p. 416; am. 1987, ch. 289, § 7, p. 610.

**39-308. Records of alcoholics, intoxicated or addicted persons. —**

(1) The registration and other records of treatment facilities shall remain confidential, and are privileged to the patient.

(2) Notwithstanding subsection (1) of this section, the director may make available information from patients' records for purposes of research into the causes and treatment of alcoholism or drug addiction. Information under this subsection shall not be published in a way that discloses patients' names or other identifying information.

**History.**

I.C., § 39-308, as added by S.L. 1975, ch.

149, § 1, p. 376; am. 1987, ch. 289, § 8, p. 610.

**STATUTORY NOTES****Prior Laws.**

Former § 39-308, which comprised 1907, p. 182, § 24; reen. R.C., § 1100; am. 1913, ch. 140, § 2, p. 499; reen. C.L., § 1100; am. 1919, ch. 10, § 1, p. 71; C.S., § 1662; am. 1929, ch.

18, § 1, p. 18; I.C. A., § 38-308; am. 1935, ch. 34, § 1, p. 58; am. 1945, ch. 53, § 1, p. 67; am. 1955, ch. 257, § 9, p. 586, was repealed by S.L. 1971, ch. 2, § 1, p. 4.

**39-309. Payment for treatment — Financial ability of patients. —**

(1) If treatment is provided by an approved public treatment facility and the patient has not paid the charge therefor, the department is entitled to any income or payment received by the patient or to which he may be entitled for the services rendered, and to any payment from any public or private source available to the department because of the treatment provided to the patient.

(2) A patient in an approved treatment facility, or the estate of the patient, or a person obligated to provide for the cost of treatment and having sufficient financial ability, is liable to the department for the cost of transportation, maintenance and treatment of the patient therein in accordance with rates established by the department.

(3) The board of health and welfare shall adopt rules and regulations governing financial ability that take into consideration the income, savings and other personal and real property of the person required to pay, as well as any support being furnished by him to any person whom he may be required by law to support.

**History.**

I.C., § 39-309, as added by S.L. 1975, ch. 149, § 1, p. 376; am. 1976, ch. 98, § 4, p. 416.

**STATUTORY NOTES****Prior Laws.**

Former § 39-309, which comprised 1927,

ch. 122, § 1, p. 166; I.C.A., § 38-309, was repealed by S.L. 1971, ch. 2, § 1, p. 4.

**39-310. Criminal law limitations. —** (1) With the exception of per-

sons below the statutory age for consuming alcoholic beverages and of persons affected by the provisions of subsection (3) herein, no person shall be incarcerated or prosecuted criminally or civilly for the violation of any law, ordinance, resolution or rule that includes drinking, being a common drunkard, or being found in an intoxicated or addicted condition as one of the elements of the offense giving rise to criminal or civil penalty or sanction.

(2) No county, municipality, or other political subdivision may interpret or apply any law of general application to circumvent the provision of subsection (1) of this section.

(3) Nothing in this chapter shall affect any law, ordinance, resolution, or rule against drunken driving, driving under the influence of alcohol or drugs, or other similar offense involving the operation of a vehicle, aircraft, boat, machinery, or other equipment, or regarding the sale, purchase, dispensing, possessing, or use of alcoholic beverages or drugs at stated times and places or by a particular class of persons, or regarding the carrying of a concealed weapon when intoxicated or under the influence of an intoxicating drink or drug, or regarding pedestrians who are under the influence of alcohol or drugs to a degree which renders them a hazard and who walk or are otherwise upon a highway except on a sidewalk, or regarding persons who are using or are under the influence of controlled substances or narcotic drugs and who are on public property, roadways or conveyances or on private property open to the public.

(4) This chapter shall not limit or alter the terms or effect of section 18-116, Idaho Code.

(5) Nothing in this chapter shall affect the enforcement of any other provisions of the uniform controlled substances act.

**History.**

I.C., § 39-310, as added by S.L. 1975, ch. 149, § 1, p. 376; am. 1987, ch. 289, § 9, p. 610; am. 2002, ch. 189, § 1, p. 543.

**STATUTORY NOTES**

**Cross References.**

Uniform controlled substances act, § 37-2701 et seq. 182, § 25; reen. R.C. & C.L., § 1101; C.S., § 1663; I.C.A., § 38-310; am. 1955, ch. 257, § 10, p. 586, was repealed by S.L. 1971, ch. 2, § 1, p. 4.

**Prior Laws.**

Former § 39-310, which comprised 1907, p.

**JUDICIAL DECISIONS**

**Operation of Vehicle While Intoxicated.**

This chapter does not affect offenses involving the operation of a vehicle while intoxicated: it does not mandate that treatment for alcoholism be provided to a prison inmate. *State v. Puga*, 111 Idaho 874, 728 P.2d 398 (Ct. App. 1986).

Where the record showed that the court chose incarceration as a means of protecting society after numerous attempts had proved unsuccessful in deterring the defendant from

operating motor vehicles while he was under the influence of alcohol, a five-year sentence for driving while under the influence and a concurrent three-year sentence for driving without privileges were not invalid under this section as punishment for alcoholism. *State v. Garza*, 115 Idaho 32, 764 P.2d 109 (Ct. App. 1988).

**Cited in:** *Nowoj v. State*, 115 Idaho 34, 764 P.2d 111 (Ct. App. 1988).



**39-311. Rules and regulations.** — The board of health and welfare shall promulgate such rules and regulations as are deemed necessary to carry out the provisions of this act, subject to the provisions of chapter 52, title 67, Idaho Code.

**History.**

I.C., § 39-311, as added by S.L. 1975, ch. 149, § 1, p. 376.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-311, which comprised 1907, p. 182, § 26; reen. R.C., § 1102; am. 1913, ch. 140, § 2, p. 500; reen. C.L., § 1102; C.S., § 1664; I.C.A., § 38-311; am. 1955, ch. 257, § 11, p. 586, was repealed by S.L. 1971, ch. 2, § 1, p. 4.

**Compiler's Notes.**

The words "this act" in subsection (6) refer to S.L. 1975, ch. 149, § 1, which is compiled as §§ 39-301, 39-302, 39-304 to 39-307, and 39-308 to 39-311.

**Effective Dates.**

Section 2 of S.L. 1975, ch. 149, as amended by section 5 of S.L. 1976, ch. 98 read: "This act shall be in full force and effect in accordance with the following schedule:

"(1) §§ 39-302, 39-303, 39-304, 39-305, 39-307, 39-308, 39-309, and 39-311 on July 1, 1976.

"(2) §§ 39-301, 39-306, 39-307A, and 39-310 on January 15, 1977."

**39-312 — 39-314. Disinfection of clothing and bedding — Exclusion of exposed persons from schools or public gathering — Hospital for infectious diseases. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised 1907, p. 182, §§ 27 to 30; reen. R.C. & C.L., §§ 1103, 1105; reen. R.C., § 1104; am. 1913, ch. 140, § 2, subd. 1104, p. 501; reen. C.L., § 1104;

C.S., §§ 1665 to 1667; I.C.A., §§ 38-312 to 38-314; am. 1935, ch. 34, § 2, p. 58; am. 1955, ch. 257, §§ 12, 13, p. 586, were repealed by S.L. 1971, ch. 2, § 1, p. 4.

**39-315. Cremation and burial of bodies. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised S.L. 1907, p. 182, § 31; am. R.C., § 1106; am. 1913, ch.

140, § 2, subd. 1106, p. 501; reen. C.L., § 1106; C.S., § 1668; I.C.A., § 38-315, was repealed by S.L. 1955, ch. 257, § 14, p. 586.

**39-316. Quarantine of cities and counties. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised 1907, p. 182, § 32; reen. R.C. & C.L., § 1107; C.S., § 1669;

I.C.A., § 38-316; am. 1955, ch. 257, § 15, p. 586, was repealed by S.L. 1971, ch. 2, § 1, p. 4.

# CHAPTER 4

## PUBLIC HEALTH DISTRICTS

SECTION.

- 39-401. Legislative intent.
- 39-402 — 39-407. [Repealed.]
- 39-408. Establishment of districts.
- 39-409. District health departments — Establishment — Services.
- 39-410. District board of health — Establishment.
- 39-411. Composition of district board — Qualifications of members — Appointment and removal — Terms — Trustee selected for board of trustees of district boards of health.
- 39-412. Meetings of the district board — Compensation of members.
- 39-413. District health director — Appointment — Powers and duties.
- 39-414. Powers and duties of district board.
- 39-414A. Audit of health district finances.
- 39-415. Quarantine.
- 39-416. Rules adopted by district board — Procedure.
- 39-417. Hearings by district board — Oaths — Witnesses — Subpoenas.
- 39-418. Judicial review of district board's determination — Exclusive procedure.

SECTION.

- 39-419. Violation of public health laws — Misdemeanor — Civil liability for expense.
- 39-420. Civil actions by district board — Enforcement of act — Abatement of nuisances.
- 39-421. Special counsel of district board.
- 39-422. Public health district fund — Establishment — Divisions — Fiscal officer — Expenditures.
- 39-423. Budget committee of public health district.
- 39-424. Cost of maintenance of district — Apportionment to member counties.
- 39-425. General state aid to districts — Procedures.
- 39-426. Public employees retirement system.
- 39-427. Reporting of children suspected of having severe auditory and/or visual impairment. [Repealed.]

**39-401. Legislative intent.** — The various health districts, as provided for in this chapter, are not a single department of state government unto themselves, nor are they a part of any of the twenty (20) departments of state government authorized by section 20, article IV, Idaho constitution, or of the departments prescribed in section 67-2402, Idaho Code.

It is legislative intent that health districts operate and be recognized not as state agencies or departments, but as governmental entities whose creation has been authorized by the state, much in the manner as other single purpose districts. Pursuant to this intent, and because health districts are not state departments or agencies, health districts are exempt from the required participation in the services of the purchasing agent or employee liability coverage, as rendered by the department of administration. However, nothing shall prohibit the health districts from entering into contractual [contractual] arrangements with the department of administration, or any other department of state government or an elected constitutional officer, for these or any other services.

It is legislative intent to affirm the provisions of section 39-413, Idaho Code, requiring compliance with the state merit system, and to affirm the participation of the health districts in the public employee retirement system, pursuant to section 39-426, Idaho Code, chapter 13, title 59, Idaho Code, and chapter 53, title 67, Idaho Code.

It is also legislative intent that the matters of location of deposit of health district funds, or the instruments or documents of payment from those funds shall be construed as no more than items of convenience for the conduct of business, and in no way reflect upon the nature or status of the health districts as entities of government.

This section merely affirms that health districts created under this chapter are not state agencies, and in no way changes the character of those agencies as they existed prior to this act.

**History.**

I.C., § 39-401, as added by 1976, ch. 179,  
§ 1, p. 644; am. 1986, ch. 63, § 1, p. 180.

**STATUTORY NOTES****Prior Laws.**

Former § 39-401, which comprised S.L. 1947, ch. 106, § 1, p. 215, was repealed by S.L. 1970, ch. 90, § 20.

**Compiler's Notes.**

The bracketed word "contractual" in the

second paragraph was inserted by the compiler to supply the intended term.

The words "this act" refer to S.L. 1976, ch. 179, which is compiled as §§ 39-401, 39-413, 39-414, 39-416, 39-421, 39-422, and 39-424.

**JUDICIAL DECISIONS**

**Cited in:** Sunnyside Indus. & Prof'l Park, LLC v. Eastern Idaho Pub. Health Dist., 147 Idaho 668, 214 P.3d 654 (Ct. App. 2009).

**39-402 — 39-407. Public health districts — Establishment and regulation. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

These sections, which comprised S.L. 1947,

ch. 106, §§ 2 to 7, p. 215, were repealed by S.L. 1970, ch. 90, § 20.

**39-408. Establishment of districts.** — There is hereby established within the state of Idaho seven (7) public health districts more particularly defined as follows:

District No. 1 shall include the counties of Boundary, Bonner, Kootenai, Benewah and Shoshone;

District No. 2 shall include the counties of Latah, Clearwater, Nez Perce, Lewis and Idaho;

District No. 3 shall include the counties of Adams, Washington, Payette, Gem, Canyon and Owyhee;

District No. 4 shall include the counties of Valley, Boise, Ada and Elmore;

District No. 5 shall include the counties of Camas, Blaine, Gooding, Lincoln, Jerome, Minidoka, Twin Falls and Cassia;

District No. 6 shall include the counties of Power, Oneida, Bannock, Franklin, Caribou, Bear Lake, Bingham and Butte;

District No. 7 shall include the counties of Lemhi, Custer, Clark, Jefferson, Bonneville, Teton, Madison and Fremont.

**History.**

1970, ch. 90, § 1, p. 218.



## STATUTORY NOTES

**Effective Dates.** the act should be in full force and effect July  
Section 22 of S.L. 1970, ch. 90 provided that 1, 1971.

**39-409. District health departments — Establishment — Services.** — There is hereby created and established in each of the above described public health districts a district health department, hereinafter referred to as the district health department. The district health department shall have as its head the district board of health.

The district health department will provide the basic health services of public health education, physical health, environmental health, and public health administration, but this listing shall not be construed to restrict the service programs of the district health department solely to these categories. Each district shall have a doctor of medicine licensed in Idaho as a staff member or as a regular consultant.

**History.**

1970, ch. 90, § 2, p. 218; am. 1973, ch. 29,  
§ 1, p. 56; am. 1986, ch. 63, § 2, p. 180.

**39-410. District board of health — Establishment.** — There is hereby created and established in each of the public health districts a district board of health, hereinafter referred to as the district board, which shall be vested with the authority, control, and supervision of the district health department, and with such powers as required to perform the duties as are set forth in this act and shall be responsible for supervision of all district health programs.

**History.**

1970, ch. 90, § 3, p. 218; am. 1973, ch. 29,  
§ 2, p. 56.

## STATUTORY NOTES

**Compiler's Notes.**

179, which is compiled as §§ 39-401, 39-413,  
The words "this act" refer to S.L. 1976, ch. 39-414, 39-416, 39-421, 39-422, and 39-424.

**39-411. Composition of district board — Qualifications of members — Appointment and removal — Terms — Trustee selected for board of trustees of district boards of health.** — For those districts comprised of less than eight (8) counties, the district board of health shall consist of seven (7) members to be appointed by the boards of county commissioners within each district acting jointly, and each board of county commissioners may appoint a board member. For those districts comprised of eight (8) counties, the district board of health shall consist of not less than eight (8) members nor more than nine (9) members and each board of county commissioners may appoint a board member. Each member of the district board of health shall be a citizen of the United States, a resident of the state of Idaho and the public health district for one (1) year immediately last past, and a qualified elector. One (1) member of the district board, if available to serve, shall be a physician licensed by the Idaho state board of medicine and

no more than one (1) member shall be appointed from any professional or special interest group. All members shall be chosen with due regard to their knowledge and interest in public health and in promoting the health of the citizens of the state and the public health district. Representation shall be assured from rural as well as urban population groups. All appointments to the district board shall be confirmed by a majority vote of all the county commissioners of all the counties located within the public health district. Any member of the district board may be removed by majority vote of all the county commissioners of all the counties located within the district. The members of the district board, each year, shall select a chairman, a vice-chairman and a trustee. The trustee shall represent the district board as a member of the board of trustees of the Idaho district boards of health. The board of trustees of the Idaho district boards of health shall have authority to allocate appropriations from the legislature to the health districts. The board of trustees shall develop and administer a formula for the allocation of legislative appropriations.

The members of the district board of health shall be appointed for the purpose of organization as follows: One (1) member to be appointed for a term of one (1) year, one (1) for two (2) years, one (1) for three (3) years, two (2) for four (4) years and two (2) for five (5) years. Each succeeding vacancy shall be filled by the boards of county commissioners within the district acting jointly and with confirmation as herein described for a term of five (5) years, subject to reappointment; and vacancies on the board for an unexpired term shall be filled for the balance of the unexpired term. Notwithstanding any provision of this section as to term of appointment, if a board member is an appointee for a board of county commissioners, and if that board member is an elected county commissioner and leaves office prior to the expiration of the term on the district board of health, the board of county commissioners may declare the position vacant and may appoint another currently elected county commissioner to fill the unexpired portion of the term of that board member.

**History.**

1970, ch. 90, § 4, p. 218; am. 1972, ch. 159, § 1, p. 352; am. 1973, ch. 29, § 3, p. 56; am. 1984, ch. 38, § 1, p. 64; am. 1986, ch. 63, § 3,

p. 180; am. 1992, ch. 122, § 1, p. 399; am. 1999, ch. 61, § 1, p. 151; am. 2007, ch. 163, § 1, p. 489; am. 2010, ch. 287, § 1, p. 768.

**STATUTORY NOTES****Amendments.**

The 2007 amendment, by ch. 163, in the second sentence in the first paragraph, inserted "not less than" and "nor more than nine (9) members."

The 2010 amendment, by ch. 287, added the last sentence in the last paragraph.

**Effective Dates.**

Section 3 of S.L. 2010, ch. 286 provided that the act should take effect on and after April 11, 2010.

**39-412. Meetings of the district board — Compensation of members.** — The district board shall hold such meetings as may be necessary for the orderly conduct of its business and such meetings may be called upon seventy-two (72) hours' notice by the chairman or a majority of the members.

Four (4) members shall be necessary to constitute a quorum and the action of the majority of members present shall be the action of the board. The members of the board shall be compensated as provided by section 59-509(i), Idaho Code.

**History.**

1970, ch. 90, § 5, p. 218; am. 1973, ch. 29, § 4, p. 56; am. 1980, ch. 247, § 33, p. 582; am.

1984, ch. 40, § 1, p. 66; am. 1989, ch. 68, § 1, p. 110; am. 2007, ch. 91, § 1, p. 270.

**STATUTORY NOTES**

**Amendments.**

The 2007 amendment, by ch. 91, updated the section reference at the end of the section.

**39-413. District health director — Appointment — Powers and duties.** — A district health director shall be appointed by the district board. The director shall have and exercise the following powers and duties in addition to all other powers and duties inherent in the position or delegated to him or imposed upon him by law or rule, regulation, or ordinance:

(1) To be secretary and administrative officer of the district board of health;

(2) To prescribe such rules and regulations, consistent with the requirements of this chapter, as may be necessary for the government of the district, the conduct and duties of the district employees, the orderly and efficient handling of business and the custody, use and preservation of the records, papers, books and property belonging to the public health district;

(3) To administer oaths for all purposes required in the discharge of his duties;

(4) With the approval of the district board to:

(a) Prescribe the positions and the qualifications of all personnel under the district health director on a nonpartisan merit basis in accordance with the objective standards approved by the district board.

(b) Fix the rate of pay and appoint, promote, demote, and separate such employees and to perform such other personnel actions as are needed from time to time in conformance with the requirements of chapter 53, title 67, Idaho Code.

(c) Create such units and sections as are or may be necessary for the proper and efficient functioning of the duties herein imposed.

**History.**

1970, ch. 90, § 6, p. 218; am. 1972, ch. 159, § 2, p. 352; am. 1973, ch. 29, § 5, p. 56; am.

1974, ch. 23, § 70, p. 633; am. 1976, ch. 179, § 2, p. 644; am. 1982, ch. 133, § 1, p. 380; am. 1986, ch. 63, § 4, p. 180.

**39-414. Powers and duties of district board.** — The district board of health shall have and may exercise the following powers and duties:

(1) To administer and enforce all state and district health laws, regulations, and standards.

(2) To do all things required for the preservation and protection of the public health and preventive health, and such other things delegated by the director of the state department of health and welfare or the director of the



department of environmental quality and this shall be authority for the director(s) to so delegate.

(3) To determine the location of its main office and to determine the location, if any, of branch offices.

(4) To enter into contracts with any other governmental or public agency whereby the district board agrees to render services to or for such agency in exchange for a charge reasonably calculated to cover the cost of rendering such service. This authority is to be limited to services voluntarily rendered and voluntarily received and shall not apply to services required by statute, rule, and regulations, or standards promulgated pursuant to this act or chapter 1, title 39, Idaho Code.

(5) All moneys or payment received or collected by gift, grant, devise, or any other way shall be deposited to the respective division or subaccount of the public health district in the public health district fund authorized by section 39-422, Idaho Code.

(6) To establish a fiscal control policy required by the state controller.

(7) To cooperate with the state board of health and welfare, the department of health and welfare, the board of environmental quality and the department of environmental quality.

(8) To enter into contracts with other governmental agencies, and this act hereby authorizes such other agencies to enter into contracts with the health district, as may be deemed necessary to fulfill the duties imposed upon the district in providing for the health of the citizens within the district.

(9) To purchase, exchange or sell real property and construct, rent, or lease such buildings as may be required for the accomplishment of the duties imposed upon the district and to further obtain such other personal property as may be necessary to its functions.

(10) To accept, receive and utilize any gifts, grants, or funds and personal and real property that may be donated to it for the fulfillment of the purposes outlined in this act.

(11) To establish a charge whereby the board agrees to render services to or for entities other than governmental or public agencies for an amount reasonably calculated to cover the cost of rendering such service.

(12) To enter into a lease of real or personal property as lessor or lessee, or other transaction with the Idaho health facilities authority for a term not to exceed ninety-nine (99) years upon a determination by the district board that the real or personal property to be leased is necessary for the purposes of the district, and to pledge nontax revenues of the district to secure the district's obligations under such leases. For the purposes of this chapter, a public health district is not a subdivision of the state and shall be considered an independent body corporate and politic pursuant to section 1, article VIII, of the constitution of the state of Idaho, and is not authorized hereby to levy taxes nor to obligate the state of Idaho concerning such financing.

(13) To administer and certify solid waste disposal site operations, closure, and post closure procedures established by statute or regulation in accordance with provisions of chapter 74, title 39, Idaho Code, in a manner equivalent to the site certification process set forth in section 39-7408, Idaho Code.

(14) To select a board member to serve as trustee on the board of trustees of the Idaho district boards of health.

#### History.

1970, ch. 90, § 14, p. 218; am. 1973, ch. 29, § 6, p. 56; am. 1974, ch. 23, § 71, p. 633; 1976, ch. 51, § 9, p. 152; am. 1976, ch. 179, § 3, p. 644; am. 1980, ch. 118, § 1, p. 257; am. 1982, ch. 133, § 2, p. 380; am. 1986, ch. 63,

§ 5, p. 180; am. 1988, ch. 213, § 1, p. 403; am. 1992, ch. 331, § 3, p. 972; am. 1993, ch. 139, § 23, p. 342; am. 1994, ch. 180, § 72, p. 420; am. 1999, ch. 61, § 2, p. 151; am. 2000, ch. 132, § 33, p. 309; am. 2008, ch. 231, § 1, p. 702.

### STATUTORY NOTES

#### Cross References.

Department of environmental quality, § 39-104 et seq.

Department of health and welfare, § 56-1001 et seq.

Health facilities authority, § 39-1444.

Idaho health planning act, § 39-4901 et seq.

State controller, § 67-1001 et seq.

#### Amendments.

The 2008 amendment, by ch. 231, added the last sentence in subsection (12).

#### Compiler's Notes.

The words "this act" refer to S.L. 1976, ch. 179, which is compiled as §§ 39-401, 39-413, 39-414, 39-416, 39-421, 39-422, and 39-424.

Section 24 of S.L. 1993, ch. 139 read: "If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act."

The letter "s" enclosed in parentheses so appeared in the law as enacted.

#### Effective Dates.

Section 4 of S.L. 1992, ch. 331 declared an emergency. It became law without the governor's signature April 15, 1992.

Section 25 of S.L. 1993, ch. 139 declared an emergency. Approved March 25, 1993.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 72 of S.L. 1994, ch. 180 became effective January 2, 1995.

### JUDICIAL DECISIONS

#### Mandatory Duty.

The language under subdivision (1) of this section, requiring a public health district to "administer ... health laws, regulations and standards," creates a mandatory duty. *Mead v. Arnell*, 117 Idaho 660, 791 P.2d 410 (1990).

**Cited in:** *Lindstrom v. District Bd. of Health*, 109 Idaho 956, 712 P.2d 657 (Ct. App. 1985).

**39-414A. Audit of health district finances.** — It shall be the duty of each district board of health to cause to be made a full and complete audit of all the financial transactions of the health district no less frequently than every two (2) years. Such audit shall be made by or under the direction of the legislative council, in accordance with generally accepted auditing standards and procedures. The district board of health shall include all necessary expenses for such audit in its budget.

#### History.

I.C., § 39-414A, as added by 1977, ch. 71,

§ 6, p. 134; am. 1982, ch. 134, § 1, p. 383; am. 1993, ch. 327, § 20, p. 1186.

## STATUTORY NOTES

**Cross References.**

Legislative council, § 67-427 et seq.

**Effective Dates.**

Section 2 of S.L. 1982, ch. 134 declared an emergency. Approved March 22, 1982.

**39-415. Quarantine.** — The district board shall have the same authority, responsibility, powers, and duties in relation to the right of quarantine within the public health district as does the state.

**History.**

1970, ch. 90, § 7, p. 218; am. 1973, ch. 29, § 7, p. 56.

**39-416. Rules adopted by district board — Procedure.** — (1) The district board by the affirmative vote of a majority of its members may adopt, amend or rescind rules and standards as it deems necessary to carry out the purposes and provisions of this act.

(2) Every rule or standard adopted, amended, or rescinded by the district board shall be done in a manner conforming to the provisions of chapter 52, title 67, Idaho Code.

(3) At the same time that proposed rules are transmitted to the director of legislative services, they shall be submitted for review and comment to the board of county commissioners of each county within the public health district's jurisdiction. If the rules relate to environmental protection or programs administered by the department of environmental quality, the rules shall also be submitted for review and comment to the state board of environmental quality. All other rules that do not relate to environmental protection or programs administered by the department of environmental quality shall be submitted for review and comment to the state board of health and welfare. The state board of health and welfare, or the state board of environmental quality, shall, within seventy-five (75) days of receipt of a district board's proposed rules, disapprove of the adoption of the rules if, on the advice of the attorney general, such rules would be in conflict with state laws or rules. The state board of health and welfare, or the state board of environmental quality, shall immediately advise the district board as to the reason for the disapproval.

(4) This section does not apply to measures adopted for the internal operation of the district board or for federal programs where the regulations are established by the federal government but shall apply to all measures affecting the public at large or any identifiable segment thereof.

(5) Public health districts shall have all proposed rules regarding environmental protection or programs administered by the department of environmental quality submitted for review and comment to the state board of environmental quality and such rules must be approved by adoption of a concurrent resolution by both houses of the legislature or such rules shall expire at the conclusion of a regular session of the legislature. It is the intent of the legislature that standards and rules relating to subsurface sewage systems, wastewater treatment, sewage systems and water quality be consistent statewide.



**History.**

1970, ch. 90, § 11, p. 218; am. 1973, ch. 29, § 8, p. 56; am. 1974, ch. 23, § 72, p. 633; am. 1976, ch. 179, § 4, p. 644; am. 1986, ch. 17,

§ 1, p. 58; am. 1993, ch. 296, § 1, p. 1094; am. 1999, ch. 61, § 3, p. 151; am. 2010, ch. 24, § 1, p. 43; am. 2010, ch. 310, § 1, p. 830.

**STATUTORY NOTES****Cross References.**

Attorney general, § 67-1401 et seq.  
Board of environmental quality, § 39-107.  
Board of health and welfare, § 56-1005.  
Director of legislative services, § 67-701.

section (3), inserted “or the state board of environmental quality” after “board of health and welfare”.

The 2010 amendment, by ch. 310, added subsection (5).

**Amendments.**

This section was amended by two 2010 acts which appear to be compatible and have been compiled together.

The 2010 amendment, by ch. 23, in the first sentence of subsection (3), deleted “and standards” after “proposed rules”, deleted “the state board of health and welfare, and to” after “review and comment to”; added the second and third sentences in subsection (3); in the next-to-last and last sentences in sub-

**Compiler’s Notes.**

The words “this act” refer to S.L. 1976, ch. 179, which is compiled as §§ 39-401, 39-413, 39-414, 39-416, 39-421, 39-422, and 39-424.

**Effective Dates.**

Section 2 of S.L. 1993, ch. 296 declared an emergency. Approved March 31, 1993.

Section 3 of S.L. 2010, ch. 310 declared an emergency. Approved April 11, 2010.

**JUDICIAL DECISIONS**

**Cited in:** Lindstrom v. District Bd. of Health, 109 Idaho 956, 712 P.2d 657 (Ct. App.

1985); Mead v. Arnell, 117 Idaho 660, 791 P.2d 410 (1990).

**39-417. Hearings by district board — Oaths — Witnesses — Subpoenas.** — (1) Any person, association, public or private agency, corporation, or the district director alleging a violation of this act, the rules promulgated thereunder, or any matter within the jurisdiction of the district board, or any alleged violator thereof, may, pursuant to the provisions of chapter 52, title 67, Idaho Code, and the rules promulgated thereunder by the state board of health and welfare or the board of environmental quality, seek a hearing before the district board and/or such other relief or remedy as is provided or available.

(2) The hearings herein provided may be conducted by the district board or by its designated agent and in either case the district board or its agent shall have the same powers and authority set out in subsection (3) of section 39-107, Idaho Code. The provisions of this section shall not apply to the internal administrative affairs of the district board or department nor to its subordinate sections and units.

**History.**

1970, ch. 90, § 9, p. 218; am. 1973, ch. 29,

§ 9, p. 56; am. 1974, ch. 23, § 73, p. 633; am. 2000, ch. 132, § 34, p. 309.

**STATUTORY NOTES****Compiler’s Notes.**

The term “this act” in subsection (1) refers to S.L. 1973, ch. 29, which is codified as §§ 39-409 to 39-414, 39-415 to 39-420, 39-

422, and 39-423. Probably, the reference should be to “this chapter”, being chapter 4, title 39, Idaho Code.

**JUDICIAL DECISIONS****Jurisdiction of Court.**

Where no final determination of the district board of health was involved, the board did not raise before the district court the question of whether the action for declaratory relief was timely filed, the parties essentially agreed upon the facts, evidence was adduced in the district court for determination of one

disputed factual issue, and neither party challenged any of the court's findings, the district court had jurisdiction under this section to engage in the review authorized by § 67-5201 et seq. *Lindstrom v. District Bd. of Health*, 109 Idaho 956, 712 P.2d 657 (Ct. App. 1985).

**39-418. Judicial review of district board's determination — Exclusive procedure.** — (1) Judicial review of a final determination of the district board may be secured by any person adversely affected thereby by filing a petition for review as prescribed by chapter 52, title 67, Idaho Code, in the district court of the county wherein he lives within thirty (30) days after receipt of notice of the district board's final determination. The petition for review shall be served upon the district health director and the director of the department of health and welfare of the state of Idaho. The director may appear in any such hearing as a matter of right. Such service shall be jurisdictional and the provisions of this section shall be the exclusive procedure for appeal or review.

(2) If no appeal or review is sought within the time prescribed in (1) above, the final determination of the district board shall be conclusive as to factual matters decided therein and not subject to collateral attack in any proceeding to enforce its provisions.

**History.**

1970, ch. 90, § 10, p. 218; am. 1973, ch. 29, § 10, p. 56; am. 1974, ch. 23, § 74, p. 633.

**STATUTORY NOTES****Cross References.**

Director of department of health and safety, § 56-1003.

**JUDICIAL DECISIONS****ANALYSIS**

Exclusive procedure.  
Jurisdictional requirements.

**Exclusive Procedure.**

The remedies of § 67-5201 et seq. are not available after a final determination of the board unless the provisions of this section are strictly complied with; this section dictates the exclusive procedure for appeal or review of a final board decision unless the procedure fails to provide an adequate remedy. *Lindstrom v. District Bd. of Health*, 109 Idaho 956, 712 P.2d 657 (Ct. App. 1985).

**Jurisdictional Requirements.**

Where applicable, requirements of this section for timely filing and service of a petition for review are jurisdictional. *Lindstrom v. District Bd. of Health*, 109 Idaho 956, 712 P.2d 657 (Ct. App. 1985).

**Cited in:** *District Bd. of Health v. Chancey*, 94 Idaho 944, 500 P.2d 845 (1972).

**39-419. Violation of public health laws — Misdemeanor — Civil liability for expense.** — (1) It shall be unlawful for any person, associa-

tion, or corporation, and the officers thereof to willfully violate, disobey, or disregard the provisions of the public health laws or the terms of any lawful notice, order, standard, rule, regulation, or ordinance issued pursuant thereto[.](; or)

(2) Any person, association, or corporation, or the officers thereof, violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding three hundred dollars (\$300), or by imprisonment in the county jail for a term not exceeding six (6) months, or by both such fine and imprisonment. In addition to fine and imprisonment, any person, association or corporation, or the officers thereof, found to be in violation of this act or the rules promulgated thereunder shall be liable for any expense incurred by the district board of health in enforcing this act, or in removing or terminating any nuisance, source of filth, cause of sickness, or health hazard. Conviction under the penalty provisions of this act or any other health law or rules promulgated thereunder shall not relieve any person from any civil action in damages that may exist for any injury resulting from any violation of the public health laws or rules promulgated by the district board of health.

(3) A violator of any law or rule within the jurisdiction of the district shall be liable in an amount not in excess of the limits prescribed in section 39-108, Idaho Code. The district board may seek recovery by commencing an action in the district court of the county wherein the violation occurred. Amounts recovered shall be deposited as required by the provisions of section 39-414(5), Idaho Code.

#### History.

1970, ch. 90, § 8, p. 218; am. 1973, ch. 29, § 11, p. 56; am. 1986, ch. 63, § 6, p. 180; am.

1992, ch. 122, § 2, p. 399; am. 2000, ch. 132, § 35, p. 309.

### STATUTORY NOTES

#### Compiler's Notes.

The bracketed insertion at the end of subsection (1) was added by the compiler to supply missing punctuation. The parentheses at the end of subsection (1) indicate surplus

language from the 1970 enactment of this section.

The words "this act" refer to S.L. 1976, ch. 179, which is compiled as §§ 39-401, 39-413, 39-414, 39-416, 39-421, 39-422, and 39-424.

### JUDICIAL DECISIONS

#### Special Counsel's Expenses.

Through the 1992 amendment to § 39-421, it appears that the legislature intended that the expenses of special counsel should be recovered from persons violating this chapter. If the legislature intended to include attorney fees in the "any expense" provision of this

section alone, then the amendment to § 39-421 would have been superfluous because the costs of special counsel would already have been covered by this section. Idaho Dep't of Health & Welfare v. Southfork Lumber Co., 123 Idaho 146, 845 P.2d 564 (1993).

### DECISIONS UNDER PRIOR LAW

#### Extraordinary Expenses.

The term "extraordinary expense" was not intended to encompass attorney fees incurred in defending an attack on the validity of the

public health district's regulations at trial or on appeal. Lindstrom v. District Bd. of Health, 109 Idaho 956, 712 P.2d 657 (Ct. App. 1985) (decided prior to 1986 amendment).



Where homeowners were contesting the validity of a regulation, but were not in violation of such regulation, the district board of health was not entitled to attorney fees. *Lindstrom v.*

*District Bd. of Health*, 109 Idaho 956, 712 P.2d 657 (Ct. App. 1985) (decided prior to 1986 amendment).

**39-420. Civil actions by district board — Enforcement of act — Abatement of nuisances.** — The district board in its name shall commence and maintain all proper and necessary civil actions and proceedings to enforce the provisions of this act and the preservation and protection of the public and is specifically directed to abate nuisances when necessary for the purpose of elimination of sources of filth, infestations, infections, communicable diseases, health hazards, and conditions not compatible with the preservation and protection of the public health. Enforcement of a final determination of the district board shall be commenced by filing an action in the district court, by any party to the board action, the board, or the director, and the introduction of the final determination.

**History.**

1970, ch. 90, § 12, p. 218; am. 1973, ch. 29, § 12, p. 56.

**STATUTORY NOTES**

**Compiler's Notes.**

The words "this act" refer to S.L. 1976, ch.

179, which is compiled as §§ 39-401, 39-413, 39-414, 39-416, 39-421, 39-422, and 39-424.

**39-421. Special counsel of district board.** — The district board is hereby authorized to engage special counsel to defend it and the members in all action and proceedings brought against it or them with respect to their official duties hereunder. In addition, such special counsel may bring any civil action requested by the district board. The special counsel may request the prosecuting attorney of any county within the district for appointment as special prosecutor to assist in prosecuting any alleged violations of any of the provisions of this chapter which occurred within such county. Upon receipt of such request, the prosecutor of such county may forthwith designate the district's special counsel as special prosecutor to assist in prosecuting the alleged offender, and such special counsel shall have all the powers of a prosecuting attorney while acting as special prosecuting attorney. Compensation of such special counsel for acting as special prosecutor shall be paid by the district and subject to recovery as provided in section 39-419, Idaho Code.

**History.**

1970, ch. 90, § 13, p. 218; am. 1976, ch. 179, § 5, p. 644; am. 1992, ch. 122, § 3, p. 399.

**STATUTORY NOTES**

**Effective Dates.**

Section 4 of S.L. 1992, ch. 122 declared an emergency. Approved April 1, 1992.

JUDICIAL DECISIONS

**Costs.**

Through the 1992 amendment to this section, it appears that the legislature intended that the expenses of special counsel should be recovered from persons violating this chapter. If the legislature intended to include attorney fees in the "any expense" provision of § 39-

419 alone, then the amendment to this section would have been superfluous because the costs of special counsel would already have been covered by § 39-419. *Idaho Dep't of Health & Welfare v. Southfork Lumber Co.*, 123 Idaho 146, 845 P.2d 564 (1993).

**39-422. Public health district fund — Establishment — Divisions — Fiscal officer — Expenditures.** — (1) There is hereby authorized and established in the state treasury a special fund to be known as the public health district fund for which the state treasurer shall be custodian. Within the public health district fund there shall be seven (7) divisions, one (1) for each of the seven (7) public health districts. Each division within the fund will be under the exclusive control of its respective district board of health and no moneys shall be withdrawn from such division of the fund unless authorized by the district board of health or its authorized agent.

(2) The procedure for the deposit and expenditure of moneys from the public health district fund will be in accordance with procedures established between all district boards and the state controller. All income and receipts received by the districts shall be deposited in the public health district fund.

(3) Claims against the divisions of the [public] health district fund are not claims against the state of Idaho. Claims against an individual health district are limited to that district's division moneys.

(3) Claims against the divisions of the [public] health district fund are not claims against the state of Idaho. Claims against an individual health district are limited to that district's division moneys.

**History.**

1970, ch. 90, § 15, p. 218; am. 1973, ch. 29, § 13, p. 56; am. 1974, ch. 23, § 75, p. 633; am. 1976, ch. 51, § 10, p. 152; am. 1976, ch. 179,

§ 6, p. 644; am. 1982, ch. 133, § 3, p. 380; am. 1994, ch. 180, § 73, p. 420; am. 1999, ch. 61, § 4, p. 151.

STATUTORY NOTES

**Cross References.**

State controller, § 67-1001 et seq.

**Compiler's Notes.**

The bracketed insertion in subsection (3) was added by the compiler to supply the correct name of the referenced fund.

**Effective Dates.**

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and

after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 73 of S.L. 1994, ch. 180 became effective January 2, 1995.

**39-423. Budget committee of public health district.** — The chairmen of the boards of county commissioners located within the public health district are hereby constituted as the budget committee of the public health district.

The district board will submit to the budget committee by the first Monday in June of each year the preliminary budget for the public health district and the estimated cost to each county, as determined by the provisions of section 39-424, Idaho Code.

On or before the first Monday in July, there will be held at a time and place determined by the budget committee a budget committee meeting and

public hearing upon the proposed budget of the district. Notice of the budget committee meeting and public hearing shall be posted at least ten (10) full days prior to the date of said meeting in at least one (1) conspicuous place in each public health district to be determined by the district board of health. A copy of such notice shall also be published in the official newspaper or a generally circulated newspaper of each county of such public health district, in one (1) issue thereof, during such ten (10) day period. The place, hour and day of such hearing shall be specified in said notice, as well as the place where such budget may be examined prior to such hearing. A summary of such proposed budget shall be published with and as a part of the publication of such notice of hearing in substantially the form required by section 31-1604, Idaho Code.

On or before the first Monday in July a budget for the public health district shall be agreed upon and approved by a majority of the budget committee. Such determination shall be binding upon all counties within the district and the district itself.

#### History.

1970, ch. 90, § 16, p. 218; am. 1971, ch. 27, § 1, p. 71; am. 1973, ch. 29, § 14, p. 56; am. 1974, ch. 23, § 76, p. 633; am. 1974, ch. 58,

§ 1, p. 1134; am. 1977, ch. 77, § 1, p. 157; am. 1984, ch. 39, § 1, p. 65; am. 1986, ch. 63, § 7, p. 180; am. 1999, ch. 61, § 5, p. 151.

### STATUTORY NOTES

#### Effective Dates.

Section 2 of S.L. 1977, ch. 77 declared an emergency. Approved March 17, 1977.

### JUDICIAL DECISIONS

#### Constitutionality.

Authority of budget committee of public health district under this section does not violate Idaho Const., Art. XVIII, § 6 by extending constitutional power of county commissioners to levy taxes beyond their own county; the passing of the budget is not a levy of the tax. *District Bd. of Health v. Chancey*, 94 Idaho 944, 500 P.2d 845 (1972).

Legislation creating public health districts is not invalid for failure to give proper voice to taxpayers to vote on budget; taxpayers are able to express themselves in public hearings and through election of legislators and county commissioners. *District Bd. of Health v. Chancey*, 94 Idaho 944, 500 P.2d 845 (1972).

**39-424. Cost of maintenance of district — Apportionment to member counties.** — The manner of apportioning the contributions of the counties as part of the budget of the health district, created pursuant to section 39-423, Idaho Code, shall be as follows:

(1) Seventy percent (70%) of the amount to be contributed by the counties shall be apportioned among the various counties within the health district on the basis of population. The proportion of the total population of each county as compared to the total population of the health district shall be the proportion by which such county shall share in the contribution of county funds for the maintenance of the health district, pursuant to this subsection. The population will be determined by the last general census when applicable. When a general census number is not applicable, population shall be estimated for each county by the state department of commerce and



such estimated population number shall be certified to each health district by not later than April 1.

(2) Thirty percent (30%) of the amount to be contributed by the counties shall be apportioned among the counties within the district on the basis of taxable market value for assessment purposes. The proportion of the total taxable market value for assessment purposes of each county as compared to the total taxable market value for assessment purposes of the health district shall be the proportion by which such county shall share in the contribution of funds for the maintenance of the health district, pursuant to this subsection. Total taxable market value for assessment purposes shall mean the total taxable market value for assessment purposes as computed by the county assessor for the preceding full calendar year. Taxable market value for each county shall be certified to the health districts by the state tax commission for the preceding year.

**History.** § 8, p. 644; am. 1986, ch. 63, § 8, p. 180; am. I.C., § 39-424, as added by 1976, ch. 179, 1999, ch. 61, § 6, p. 151.

STATUTORY NOTES

**Cross References.** 1970, ch. 90, § 17, p. 218, was repealed by Department of commerce, § 67-4701 et seq. S.L. 1976, ch. 179, § 7.  
State tax commission, § 63-101.

**Prior Laws.**  
Former § 39-424, which comprised S.L.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Constitutionality.  
County contribution of funds.

**Constitutionality.**  
There is no conflict between Idaho Const., Art. II, § 1 and Idaho Const., Art. XVIII and the legislation creating public health districts since under the legislation the levying and collecting of taxes is performed at and by the county level of government properly acting in its executive capacity, and the counties' taxing function is not intruded upon. District Bd. of Health v. Chancey, 94 Idaho 944, 500 P.2d 845 (1972).

**County Contribution of Funds.**  
No discretion exists in a board of county commissioners to avoid the duty imposed by this section on the various counties to participate in the financing of public health districts, and therefore the duty is ministerial and subject to a writ of mandate. District Bd. of Health v. Chancey, 94 Idaho 944, 500 P.2d 845 (1972).  
Where county commissioners refused to perform ministerial duty to contribute its share of funds to public health district as required by this section, which would diminish ability of public health district to furnish services and reduce its matching funds from state, writ of mandate was properly issued to require commissioners to appropriate and pay required sum since the public health district had no speedy or adequate remedy in the ordinary course of law. District Bd. of Health v. Chancey, 94 Idaho 944, 500 P.2d 845 (1972).

**39-425. General state aid to districts — Procedures.** — (1) Every year, the districts shall submit a request to the legislature for money to be used to match funds contributed by the counties pursuant to section 31-862, Idaho Code, for the maintenance and operation of district health depart-

ments. The matching amount to be included in the request shall be a minimum of sixty-seven percent (67%) of the amounts pledged by each county, as adopted as part of the budget for the health districts during the budget formulations, as provided for in section 39-423, Idaho Code. If the determined amount of participation by a county would exceed the amount which could be raised applying the maximum levy prescribed in section 31-862, Idaho Code, that county's participation shall be reduced to the maximum amount which can be raised thereby.

(2) The foregoing provision shall not limit the legislature from authorizing or granting additional funds for selected projects in excess of the percentage of participation of general aid granted all health districts.

(3) General state aid to the various health districts shall be made available from state appropriations, and shall be distributed in the following manner:

(a) The amount appropriated to the health districts shall be divided based upon the formula developed and administered by the board of trustees of the Idaho district boards of health.

(b) One-half (1/2) of the amount appropriated shall be remitted to the public health trust fund on or before July 15; and

(c) The remaining one-half (1/2) of the amount appropriated shall be remitted to the public health trust fund on or before January 15.

(4) The liability of the state of Idaho to the public health districts and the public health district fund and its divisions is limited to:

(a) The funds actually authorized and granted to the various public health districts as provided in subsection (1) of this section; and

(b) The funds actually authorized or granted to the various public health districts as provided for in subsection (2) of this section; and

(c) The funds due the various health districts in payment of legally authorized contracts and agreements entered into between the departments of the state of Idaho and the various public health districts.

(5) If revenues to the state treasury are insufficient to fully meet appropriations, and reductions in spending authority have been ordered pursuant to law, the amount of moneys to match revenues contributed by the counties, pursuant to section 39-423, Idaho Code, which has been appropriated pursuant to this section, shall be reduced by the same percentage rate as other general account appropriations.

#### **History.**

I.C., § 39-425, as added by 1976, ch. 295, § 2, p. 1021; am. 1986, ch. 64, § 1, p. 185; am.

1990, ch. 32, § 1, p. 47; am. 1999, ch. 61, § 7, p. 151.

#### **STATUTORY NOTES**

#### **Cross References.**

Board of trustees of district boards of health, § 39-411.

#### **Compiler's Notes.**

Section 39-425 was amended twice in 1976 by § 9 of ch. 179 and § 11 of ch. 51. However, S.L. 1976, ch. 295, § 1 repealed § 39-425 as

so amended (S.L. 1970, ch. 90, § 18, p. 218; am. 1973, ch. 29, § 15, p. 56; am. 1974, ch. 23, § 77, p. 633; am. 1974, ch. 206, § 1, p. 1535; am. 1976, ch. 51, § 11, p. 152; am. 1976, ch. 179, § 9, p. 644) and § 2 of ch. 295 created a new § 39-425. Since Chapter 295 was the latest expression of the Legislature it was compiled.

**Effective Dates.**

Section 2 of S.L. 1990, ch. 32 declared an emergency. Approved March 7, 1990.

**39-426. Public employees retirement system.** — All public health districts shall budget sufficient funds to allow for participation in the Idaho public employees retirement system as created by chapter 13, title 59, Idaho Code.

**History.**

1970, ch. 90, § 19, p. 218.

**STATUTORY NOTES**

**Compiler's Notes.**

Section 21 of S.L. 1970, ch. 90 read: "If any provisions of this act or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the balance of the provisions of this act, or the application thereof, and to this end, the pro-

visions of the act are declared to be severable."

**Effective Dates.**

Section 22 of S.L. 1970, ch. 90 provided that the act should be in full force and effect on and after July 1, 1971.

**39-427. Reporting of children suspected of having severe auditory and/or visual impairment. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised I.C., § 39-427, as added by 1972, ch. 286, § 1, p. 722;

am. 1974, ch. 23, § 78, p. 633, was repealed by S.L. 1986, ch. 86, § 1.

**CHAPTER 5**  
**AQUIFER PROTECTION DISTRICTS**

**SECTION.**

- 39-501. Purpose.
- 39-502. Governing board.
- 39-503. Aquifer protection district authorized.
- 39-504. Petitions — Elections — Modification — Dissolution — Authority.

**SECTION.**

- 39-505. Governance — Powers and duties.
- 39-506. Powers not granted.
- 39-507. Policy and budget advisory committee.
- 39-508. Aquifer protection district funds — Fees — Budget.

**39-501. Purpose.** — The protection of ground water quality is essential for life, health and furthering matters of commerce. Multiple public agencies have regulatory jurisdiction over various aspects of everyday human activity that can and do pose risks to vital underground water supplies. Enforcement of current rules and regulations, implementation of educational programs, and inspection of potential sources of pollution require funding beyond the budgets of agencies charged with these responsibilities. The coordination of work by public agencies to assist in the prevention of degradation of valuable ground water can be a cost-effective alternative to after the fact remediation of a degraded resource. Certain ground water quality problems cannot be remedied, only prevented. The purposes of establishing an aquifer protection district include protection of the state's



economy, maintaining a water supply that does not require extensive treatment prior to human consumption or commercial use, avoiding the economic costs of remedial action, and protecting the well-being of communities that depend upon aquifers for essential human needs.

#### History.

I.C., § 39-501, as added by 2006, ch. 304, § 1, p. 937.

#### STATUTORY NOTES

##### Prior Laws.

Former §§ 39-501 to 39-513 were repealed by S.L. 1993, ch. 40, § 1, effective July 1, 1993:

39-501. (1931, ch. 205, § 1, p. 392; I.C.A., § 38-401; am. 1939, ch. 198, § 1, p. 375; am. 1945, ch. 107, § 1, p. 159; am. 1974, ch. 23, § 79, p. 633).

39-502. (1931, ch. 205, § 2, p. 392; I.C.A., § 38-402; am. 1939, ch. 198, § 2, p. 375; am. 1974, ch. 23, § 80, p. 633).

39-503. (1931, ch. 205, § 3, p. 392; I.C.A., § 38-403; am. 1939, ch. 198, § 3, p. 375; am. 1945, ch. 107, § 2, p. 159; am. 1974, ch. 23, § 81, p. 633).

39-504. (1931, ch. 205, § 4, p. 392; I.C.A., § 38-404; am. 1939, ch. 198, § 4, p. 375; am. 1945, ch. 107, § 3, p. 159; am. 1974, ch. 23, § 82, p. 633).

39-505. (1931, ch. 205, § 5, p. 392; I.C.A., § 38-405; am. 1974, ch. 23, § 83, p. 633).

39-506. (1931, ch. 205, § 6, p. 392; I.C.A., § 38-406; am. 1974, ch. 23, § 84, p. 633).

39-507. (1931, ch. 205, § 7, p. 392; I.C.A., § 38-407; am. 1974, ch. 23, § 85, p. 633).

39-508. (1931, ch. 205, § 8, p. 392; I.C.A., § 38-408; am. 1939, ch. 198, § 5, p. 375; am. 1974, ch. 23, § 86, p. 633).

39-509. (1931, ch. 205, § 9, p. 392; I.C.A., § 38-409; am. 1974, ch. 23, § 87, p. 633).

39-510. (1931, ch. 205, § 10, p. 392; I.C.A., § 38-410; am. 1974, ch. 23, § 88, p. 633).

39-511. (1931, ch. 205, § 11, p. 392; I.C.A., § 38-411; am. 1945, ch. 107, § 4, p. 159; am. 1974, ch. 23, § 89, p. 633).

39-512. (1931, ch. 205, § 12, p. 392; I.C.A., § 38-412; am. 1939, ch. 198, § 6, p. 375; am. 1974, ch. 23, § 90, p. 633).

39-513. (1931, ch. 205, § 13, p. 392; I.C.A., § 38-413; am. 1974, ch. 23, § 91, p. 633).

Former § 39-514, which comprised S.L. 1931, ch. 205, § 14, p. 392; I.C.A., § 38-414, was repealed by S.L. 1974, ch. 23, § 1.

Former §§ 39-515 to 39-517, were repealed by S.L. 1993, ch. 40, § 1, effective July 1, 1993:

39-515. (1931, ch. 205, § 15, p. 392; I.C.A., § 38-415; am. 1974, ch. 23, § 92, p. 633).

39-516. (1931, ch. 205, § 16, p. 392; I.C.A., § 38-416; am. 1974, ch. 23, § 93, p. 633).

39-517. (I.C.A., § 38-417, as added by 1945, ch. 107, § 5, p. 159; am. 1974, ch. 23, § 94, p. 633; am. 1976, ch. 51, § 12, p. 152).

**39-502. Governing board.** — For purposes of this chapter, the term “governing board” means the board of county commissioners of a county creating, or participating in, an aquifer protection district or multicounty aquifer protection district.

#### History.

I.C., § 39-502, as added by 2006, ch. 304, § 1, p. 937.

#### STATUTORY NOTES

##### Prior Laws.

Former § 39-502 was repealed. See Prior Laws, § 39-501.

**39-503. Aquifer protection district authorized.** — (1) In counties where a state designated sensitive resource aquifer has been declared as prescribed by rules of the department of environmental quality, and such designation was made prior to the enactment of this act, the board of county commissioners of any such county may, upon petition, hold an election for

establishment of, or participation in, an aquifer protection district as authorized by this chapter.

(2) A multicounty aquifer protection district may be established by a joint powers agreement as authorized by chapter 23, title 67, Idaho Code, provided all participating counties have held elections and voted in favor of establishment of, or participation in, an aquifer protection district. Every reference to a county in this chapter may be applicable to the multiple counties that participate in a multicounty aquifer protection district.

(3) An aquifer protection district is a political subdivision of the state of Idaho subordinate to the county or counties in which it is formed. The governing board of an aquifer protection district is authorized to provide coordination and funding for aquifer protection activities carried out by county government, other political subdivisions, state agencies, and private individuals or interests. The boundaries of an aquifer protection district shall conform as nearly as practicable to boundaries of the subject aquifer, the aquifer's recharge areas, and areas that may be dependent upon the aquifer as a source of water.

#### **History.**

I.C., § 39-503, as added by 2006, ch. 304,  
§ 1, p. 937.

### **STATUTORY NOTES**

#### **Prior Laws.**

Former § 39-503 was repealed. See Prior Laws, § 39-501.

subsection (1) refers to the enactment of S.L. 2006, ch. 305, which was effective July 1, 2006.

#### **Compiler's Notes.**

The phrase "the enactment of this act" in

### **39-504. Petitions — Elections — Modification — Dissolution — Authority.**

— (1) The establishment of, or participation in, an aquifer protection district may be initiated by the filing of a petition signed by not fewer than fifty (50) qualified electors of any county in which an eligible aquifer is located and who reside within the boundaries of the proposed aquifer protection district. The petition shall be filed with the county clerk of the county in which the signers of the petition are resident. The petition shall designate the proposed boundaries of the aquifer protection district.

(2) Upon the filing of the petition, the county clerk shall promptly examine the petition and certify whether the required number of qualified petitioners have signed the petition. If the number of petition signers is sufficient, the county clerk shall transmit the certified petition to the board of county commissioners.

(3) Upon receipt of a duly certified petition the board of county commissioners shall give notice of an election to be held, which election shall be held at the same time as the primary or general election, in such proposed district for the purpose of determining whether or not the proposed district shall be established or whether or not the county shall participate in a district. Such notice shall include the date and hours of the election, the polling places, the general purposes of the proposed district, a description of lands to be included in the proposed district, and a statement that a map of

the proposed district is available in the office of the board of county commissioners. The notice shall be published once each week for three (3) consecutive weeks prior to such election in a newspaper of general circulation within the county.

(4) The election shall be held and conducted consistent with the provisions of chapter 14, title 34, Idaho Code. The board of county commissioners shall appoint three (3) judges of election, one (1) of whom shall act as clerk for the election. At such election the electors shall vote for or against the establishment of, or participation in, the district.

(5) The judges of election shall certify the returns of the election to the board of county commissioners. If a majority of the votes cast at said election are in favor of the establishment of, or participation in, the district, the board of county commissioners shall declare the district established and give it a name by which, in all proceedings, it shall thereafter be known.

(6) Procedures for boundary modification or dissolution of a district created pursuant to this section shall be in substantial compliance with the provisions for petition and election provided in this section.

(7) In the event a board of county commissioners declares a district established pursuant to the procedures prescribed by this section, the district shall be recognized as a legally established political subdivision of the state of Idaho. Unless otherwise limited by law, districts are authorized to work with and across the boundaries of all political subdivisions of the state of Idaho that are wholly or partially located within the external boundaries of the established aquifer protection district. Providing protection of a state-designated sensitive resource aquifer is a governmental function.

#### **History.**

I.C., § 39-504, as added by 2006, ch. 304,  
§ 1, p. 937.

### **STATUTORY NOTES**

#### **Prior Laws.**

Former § 39-504 was repealed, See Prior  
Laws, § 39-501.

**39-505. Governance — Powers and duties.** — In addition to powers and duties otherwise set forth in this chapter, governing boards shall have the following powers and duties:

(1) To contract with public agencies and private individuals or entities to carry out district responsibilities and accomplish purposes of the district.

(2) To apply for and receive grants to carry out aquifer protection district purposes.

(3) To sue and be sued, and be a party to suits, actions and proceedings.

(4) Except as otherwise provided in this chapter, to enter into contracts and agreements, cooperative and otherwise, affecting the affairs of the district, including contracts with the United States of America, the state of Idaho and any of its agencies or instrumentalities, public or private corporations, municipalities and other governmental subdivisions, and to



cooperate with any one (1) or more of these entities to achieve the purposes of the district.

(5) To borrow money, provided however, that borrowing shall be limited to the Idaho water resource board revolving development fund pursuant to section 42-1756, Idaho Code.

(6) To have the management, control and supervision of all business and affairs of the district.

(7) To hire and retain agents, consultants and professional advisers concerning district matters.

(8) To fix, and from time to time to increase or decrease, aquifer protection fees or charges for services or facilities furnished by the district, for the payment of any current charges or indebtedness of the district.

(9) To adopt and amend resolutions not in conflict with the constitution and laws of the state for carrying on the business, objectives and affairs of the board and of the district.

(10) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted herein. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this chapter.

**History.**

I.C., § 39-505, as added by 2006, ch. 304,  
§ 1, p. 937.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-505 was repealed. See Prior  
Laws, § 39-501.

**39-506. Powers not granted.** — An aquifer protection district shall have no independent regulatory powers and no power to levy taxes. Such restriction shall not otherwise limit the police powers of the board of county commissioners.

**History.**

I.C., § 39-506, as added by 2006, ch. 304,  
§ 1, p. 937.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-506 was repealed. See Prior  
Laws, § 39-501.

**39-507. Policy and budget advisory committee.** — Subsequent to formation of an aquifer protection district, and as it regards the aquifer protection district, the governing board shall appoint a policy and budget advisory committee comprised of not less than nine (9) nor more than eleven (11) members. The policy and budget advisory committee shall be comprised of residents of the aquifer protection district boundaries with the following characteristics:

- (1) A representative of a municipal domestic water provider;
- (2) A representative of a water district;
- (3) A representative of an irrigation district;
- (4) A representative of a private water system;
- (5) A representative of a well recognized business organization;
- (6) A representative of a well recognized environmental organization;
- (7) A representative of the agricultural community;
- (8) A hydrologist or engineer; and
- (9) A citizen consumer.

The responsibilities of the policy and budget advisory committee shall include making recommendations to the governing board for work program elements, proposing methods of cooperation among public agencies with regulatory jurisdiction concerning aspects of aquifer protection, developing an aquifer protection budget recommendation to forward to the governing board and carrying out such other aquifer protection activities as the governing board, resident and committee member interest, and appropriated budget allow. In addition to the budget hearing required by section 39-508, Idaho Code, the budget and policy advisory committee shall conduct at least one (1) public hearing during each fiscal year to solicit public comment regarding aquifer protection needs. Notice of such hearing shall, at a minimum, comply with the standards for legislative hearings as provided by law. Any vacancies on the policy and budget advisory committee shall be filled in the same manner as the initial appointment.

**History.**

I.C., § 39-507, as added by 2006, ch. 304,  
§ 1, p. 937.

**STATUTORY NOTES****Prior Laws.**

Former § 39-507 was repealed. See Prior Laws, § 39-501.

**39-508. Aquifer protection district funds — Fees — Budget. —**

(1) Funds received and expended in the name of an aquifer protection district shall be budgeted, managed and audited in the same manner as funds of a county. Any such revenues and expenditures shall be accounted for separate from other county funds. The reasonable expenses of managing aquifer protection district fiscal and legal affairs are legitimate costs of district operation and use of county systems for fee collection is authorized hereby. The fiscal year for an aquifer protection district shall conform to the fiscal year for counties.

(2) Fees reasonably related to the actual cost of services rendered by an aquifer protection district may be charged to owners of land benefitted by the availability of water from the aquifer to be protected by the district. The maximum fee authorized per dwelling unit shall not exceed twelve dollars (\$12.00) annually. The maximum charge for nonresidential uses shall not exceed twice the maximum authorized residential fee, and such nonresidential fee shall be established and calculated in a manner that is roughly

proportional to aquifer use or other measure of benefits derived from protection of the aquifer.

(3) Each fiscal year the budget and policy advisory committee shall conduct a public budgetary process, including at least one (1) public hearing concerning a proposed aquifer protection district budget, before recommending a proposed budget to the governing board. Any such recommendation shall be transmitted to the governing board prior to the date of advertising the annual county budget hearing. The budget for an aquifer protection district shall be considered by the governing board in the course of its annual budget process. An aquifer protection district shall follow the financial accountability standards and limitations applicable to counties.

**History.**

I.C., § 39-508, as added by 2006, ch. 304,  
§ 1, p. 937.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-508 was repealed. See Prior  
Laws, § 39-501.

**CHAPTER 6**  
**CONTROL OF VENEREAL DISEASES**

**SECTION.**

- 39-601. Venereal diseases enumerated.
- 39-601A. Policy on expenditures.
- 39-602. Report of venereal disease to health authorities.
- 39-603. Examination, treatment, and quarantine — Repression of prostitution.
- 39-604. Confined and imprisoned persons — Examination, treatment, and quarantine — Victims of sexual offenses — Access to offenders' test results, testing

**SECTION.**

- for HIV, counseling and referral services.
- 39-605. Rules for carrying out law.
- 39-606. Reports.
- 39-607. Penalties for violations.
- 39-608. Transfer of body fluid which may contain the HIV virus — Punishment — Definitions — Defenses.
- 39-609. Declaration of policy.
- 39-610. Disclosure of HIV and HBV reporting information.

**39-601. Venereal diseases enumerated.** — Syphilis, gonorrhea, acquired immunodeficiency syndrome (AIDS), AIDS related complexes (ARC), other manifestations of HIV (human immunodeficiency virus) infections, chancroid and hepatitis B virus (HBV) infections, hereinafter designated as venereal diseases, are hereby declared to be contagious, infectious, communicable and dangerous to public health; and it shall be unlawful for anyone infected with these diseases or any of them to knowingly expose another person to the infection of such diseases.

**History.**

1921, ch. 200, §§ 1, 6, p. 406; I.C.A., § 38-501; am. 1945, ch. 52, § 1, p. 67; am. 1986, ch.

70, § 1, p. 195; am. 1988, ch. 45, § 1, p. 50;  
am. 1990, ch. 143, § 1, p. 322.



## STATUTORY NOTES

**Cross References.**

Congenital syphilis, tests for and control of,  
§ 39-1001 et seq.

Contraceptives and prophylactics, sale of,  
§ 39-801 et seq.

**Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

**Effective Dates.**

Section 2 of S.L. 1986, ch. 70 declared an emergency. Approved March 24, 1986.

## OPINIONS OF ATTORNEY GENERAL

Each incoming inmate confined to a detention facility in this state must be given a blood examination in order to detect the existence of AIDS. OAG 87-7.

The reference to "isolation or quarantine" in § 39-604 includes persons who have been identified as having been infected by a venereal disease included in this section; thus, prisoners having AIDS may be isolated or quarantined while they serve their sentences if state health officials first determine that such a quarantine is necessary to protect the

public health. OAG 87-7. (Opinion prior to 1988 amendment of § 39-604.)

With regard to inmates who are HIV positive, or who have ARC or AIDS, the duty of the Idaho department of correction to inmates and staff is to take reasonable measures to ensure the safety of both. No greater liability is created by reasonably restricting access to patient information. In fact, under some circumstances, failure to protect the confidentiality of such information could expose the department to liability. OAG 89-6.

## RESEARCH REFERENCES

**Am. Jur.** — 39 Am. Jur. 2d, Health, §§ 53, 63.

**C.J.S.** — 39A C.J.S., Health and Environment, § 28 et seq.

**39-601A. Policy on expenditures.** — It is the intent of the legislature that governmental authorities shall be required to provide those services authorized or mandated by law for treatment or testing for the diseases enumerated in section 39-601, Idaho Code, only to the extent of funding and available resources appropriated.

**History.**

I.C., § 39-601A, as added by 1988, ch. 45,  
§ 2, p. 50.

**39-602. Report of venereal disease to health authorities.** — Any physician or other person who makes a diagnosis of or treats a case of venereal disease, and any superintendent or manager of a hospital, dispensary or charitable or penal institution, in which there is a case of venereal disease, shall immediately make a report of such case to the department of health and welfare, according to such form and manner as the state board of health and welfare shall direct.

**History.**

1921, ch. 200, § 2, p. 406; I.C.A., § 38-502;

am. 1974, ch. 23, § 95, p. 633; am. 1990, ch. 143, § 2, p. 322.

### STATUTORY NOTES

#### Cross References.

Department of health and welfare, § 56-1001 et seq.

Duty to make serological test during and after pregnancy, § 39-1001.

**39-603. Examination, treatment, and quarantine — Repression of prostitution.** — State, county and municipal health officers, or their authorized deputies, within their respective jurisdiction, are hereby directed and empowered, when in their judgment it is necessary to protect the public health, to make examinations, or have examinations made by competent physician, of persons reasonably suspected of being infected with venereal disease, and to require persons infected with venereal disease to report for treatment to a reputable physician and continue treatment until cured, or to submit to treatment provided at public expense until cured, and also, when in their judgment it is necessary to protect the public health, to isolate or quarantine persons affected with venereal disease. It shall be the duty of all local and state health officers to investigate sources of infection of venereal diseases, to cooperate with the proper officials whose duty it is to enforce laws directed against prostitution, and otherwise to use every proper means for the repression of prostitution.

#### History.

1921, ch. 200, § 3, p. 406; I.C.A., § 38-503.

### STATUTORY NOTES

#### Cross References.

Abatement of moral nuisance, § 52-401 et seq.

### OPINIONS OF ATTORNEY GENERAL

The reference to "isolation or quarantine" in § 39-604 includes persons who have been identified as having been infected by a venereal disease included in § 39-601; thus, prisoners having AIDS may be isolated or quar-

antined while they serve their sentences if state health officials first determine that such a quarantine is necessary to protect the public health. OAG 87-7 (opinion prior to 1988 amendment of § 39-604).

**39-604. Confined and imprisoned persons — Examination, treatment, and quarantine — Victims of sexual offenses — Access to offenders' test results, testing for HIV, counseling and referral services.** — (1) All persons who shall be confined or imprisoned in any state prison facility in this state shall be examined for on admission, and again before release, and, if infected, treated for the diseases enumerated in section 39-601, Idaho Code, and this examination shall include a test for HIV antibodies or antigens. This examination is not intended to limit any usual or customary medical examinations that might be indicated during a person's imprisonment. Nothing herein contained shall be construed to interfere with the service of any sentence imposed by a court as a punishment for the commission of crime.

(2) All persons who shall be confined in any county or city jail may be examined for and, if infected, treated for the venereal diseases enumerated

in section 39-601, Idaho Code, if such persons have, in the judgment of public health authorities and the jailer, been exposed to a disease enumerated in section 39-601, Idaho Code.

(3) All persons who are charged with any sex offense in which body fluid, as defined in this chapter, has likely been transmitted to another shall be tested for the human immunodeficiency virus (HIV). At the request of the victim or parent, guardian or legal custodian of a minor victim, such test shall be administered not later than forty-eight (48) hours after the date on which the information or indictment is presented.

(4) All persons, including juveniles, who are charged with sex offenses, drug related charges, prostitution, any crime in which body fluid has likely been transmitted to another, or other charges as recommended by public health authorities shall be tested for the venereal diseases enumerated in section 39-601, Idaho Code, and for hepatitis C virus.

(5) All persons who are charged with any crime in which body fluid as defined in this chapter has likely been transmitted to another shall be tested for the presence of HIV antibodies or antigens, for hepatitis C virus and for hepatitis B virus.

(6) If a person is tested as required in subsection (3), (4) or (5) of this section, the results of the test shall be revealed to the court. The court shall release the results of the test to the victim(s), or if the victim(s) is a minor, to the minor's parent, guardian or legal custodian. Whenever a prisoner tests positive for HIV antibodies or antigens, the victim(s) of said prisoner shall be entitled to counseling regarding HIV, HIV testing in accordance with applicable law, and referral for appropriate health care and support services. Said counseling, HIV testing and referral services shall be provided to the victim(s) by the district health departments at no charge to the victim(s). Provided however, the requirement to provide referral services does not, in and of itself, obligate the district health departments to provide or otherwise pay for a victim's health care or support services. Any court, when releasing test results to a victim(s), or if the victim(s) is a minor, to the minor's parent, guardian, or legal custodian, shall explain or otherwise make the victim(s) or the victim's parent, guardian, or legal custodian, aware of the services to which the victim(s) is entitled as described herein.

(7) Responsibility for the examination, testing and treatment of persons confined in county or city jails shall be vested in the county or city that operates the jail. The county or city may contract with the district health departments or make other arrangements for the examination, testing and treatment services. The district health department or other provider may charge and collect for the costs of such examination and treatment, as follows:

- (a) When the prisoner is a convicted felon awaiting transfer to the board of correction, or when the prisoner is a convicted felon being confined in jail pursuant to a contract with the board of correction, the board of correction shall reimburse such costs;
- (b) When the prisoner is awaiting trial after an arrest by any state officer, the state agency employing such arresting officer shall reimburse such costs;
- (c) When the prisoner is being held for any other authority or jurisdiction, including another state, the authority or jurisdiction responsible shall reimburse such costs unless otherwise provided for by contract.



**History.**

1921, ch. 200, § 4, p. 406; I.C.A., § 38-504; am. 1974, ch. 23, § 96, p. 633; am. 1988, ch. 45, § 3, p. 50; am. 1989, ch. 220, § 1, p. 536;

am. 1990, ch. 310, § 1, p. 850; am. 1993, ch. 19, § 1, p. 71; am. 1994, ch. 408, § 1, p. 1278; am. 1999, ch. 323, § 1, p. 830; am. 2011, ch. 70, § 1, p. 148.

**STATUTORY NOTES****Cross References.**

Board of corrections, § 20-201A.

**Amendments.**

The 2011 amendment, by ch. 70, added subsection (3) and renumbered the subsequent subsections accordingly and inserted "or (5)" near the beginning of subsection (6).

**Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

**Effective Dates.**

Section 2 of S.L. 1994, ch. 408 declared an emergency. Approved April 7, 1994.

Section 2 of S.L. 2011, ch. 70 declared an emergency retroactively to February 15, 2011 and approved March 16, 2011.

**JUDICIAL DECISIONS****Order for Testing Improper.**

An order requiring a defendant who bit an officer on the leg to undergo testing for HIV and the hepatitis B virus was improper, where the officer was wearing duty pants with long johns underneath. Although the skin was broken, there was no testimony that the pants

or the long johns were torn, and it was not apparent that body fluids likely would have passed through the clothing, and the state's expert witness refused to affirmatively assert that it was more likely than not that body fluid was transferred. *State v. Johnson*, 131 Idaho 808, 964 P.2d 675 (Ct. App. 1998).

**OPINIONS OF ATTORNEY GENERAL**

Each incoming inmate confined to a detention facility in this state must be given a blood examination in order to detect the existence of AIDS. OAG 87-7.

Prison officials cannot continue to hold in quarantine those persons whose terms of imprisonment have expired unless other classes of AIDS victims are also subjected to similar quarantine. OAG 87-7.

The reference to "isolation or quarantine" in this section includes persons who have been identified as having been infected by a venereal disease included in § 39-601; thus, prisoners having AIDS may be isolated or quarantined while they serve their sentences if state health officials first determine that such a quarantine is necessary to protect the public health. OAG 87-7. (Opinion prior to 1988 amendment.)

The state is responsible for medical costs incurred by state detention facilities for the examination and treatment of venereal disease, including the detection and treatment of prisoners found to be infected with AIDS. OAG 87-7.

With regard to inmates who are HIV positive, or who have ARC or AIDS, the duty of the Idaho department of correction to inmates and staff is to take reasonable measures to ensure the safety of both. No greater liability is created by reasonably restricting access to patient information. In fact, under some circumstances, failure to protect the confidentiality of such information could expose the department to liability. OAG 89-6.

**RESEARCH REFERENCES**

**A.L.R.** — Validity and propriety under circumstances, of court-ordered HIV testing. 87 A.L.R.5th 631.

**39-605. Rules for carrying out law.** — The state board of health and welfare is hereby empowered and directed to make such rules as shall, in its judgment, be necessary for the carrying out of the provisions of this chapter, including rules providing for the control and treatment of persons isolated or quarantined under the provisions of section 39-603, Idaho Code, and such

other rules, not in conflict with provisions of this chapter, concerning the control of venereal diseases, and concerning the care, treatment and quarantine of persons infected therewith, as it may from time to time deem advisable. All such rules so made shall be of force and binding upon all county and municipal health officers and other persons affected by this chapter, and shall have the force and effect of law. Such rules may be amended from time to time by the state board of health and welfare. All rules must be entered on the minutes of the state board of health and welfare and copies shall be furnished to all county and municipal health officers and to anyone else who may apply for same. Such rules shall be adopted and become effective in accordance with the provisions of chapter 52, title 67, Idaho Code.

**History.**

1921, ch. 200, § 5, p. 406; I.C.A., § 38-505; am. 1974, ch. 23, § 97, p. 633; am. 1993, ch. 216, § 24, p. 587.

**STATUTORY NOTES****Cross References.**

Board of health and welfare, § 56-1005.

**RESEARCH REFERENCES**

**Am. Jur.** — 39 Am. Jur. 2d, Health, § 35 et seq.

**C.J.S.** — 39A C.J.S., Health and Environment, § 28 et seq.

**39-606. Reports.** — Reports to the director of the department of health and welfare of the existence of diseases included in this chapter shall be made by the name of the patient being treated for such disease. It is the intent of this chapter to observe all possible secrecy for the benefit of the sufferer so long as the said sufferer conforms to the requirements of this chapter. Confidential disease reports containing patient identification reported under this section shall only be used by public health officials who must conduct investigations and shall be subject to disclosure according to chapter 3, title 9, Idaho Code. Any person who willfully or maliciously discloses the content of any confidential public health record, as described herein to any third party, except pursuant to a written authorization by the person who is the subject of the record or by his or her guardian or conservator, or as otherwise authorized by law, shall be guilty of a misdemeanor.

**History.**

1921, ch. 200, § 7, p. 406; I.C.A., § 38-506; am. 1974, ch. 23, § 98, p. 633; am. 1987, ch.

222, § 1, p. 474; am. 1990, ch. 213, § 38, p. 480.

**OPINIONS OF ATTORNEY GENERAL**

With regard to inmates who are HIV positive, or who have ARC or AIDS, the duty of the Idaho department of correction to inmates and staff is to take reasonable measures to ensure the safety of both. No greater liability

is created by reasonably restricting access to patient information. In fact, under some circumstances, failure to protect the confidentiality of such information could expose the department to liability. OAG 89-6.

**39-607. Penalties for violations.** — Any person who shall violate any lawful rule or regulation made by the state board of health and welfare, pursuant to the authority herein granted, or who shall fail or refuse to obey any lawful order issued by any public health authority, pursuant to the authority granted in this chapter, or any person who, knowing that he or she is infected with syphilis, gonorrhea or chancroid, exposes another person to the infection of such disease, shall be deemed guilty of a misdemeanor, and shall be punished, on conviction thereof, by a fine of not more than three hundred dollars (\$300) or by imprisonment in the county jail for not more than six (6) months; or by both such fine and imprisonment.

**History.** am. 1945, ch. 55, § 1, p. 71; am. 1974, ch. 23, § 99, p. 633; am. 1988, ch. 45, § 4, p. 50.  
1921, ch. 200, § 8, p. 406; I.C.A., § 38-507;

### STATUTORY NOTES

**Cross References.** act should be in full force and effect on and after July 1, 1974.  
Board of health and welfare, § 56-1005.

**Effective Dates.**  
Section 182 of S.L. 1974, ch. 23 provided the

### RESEARCH REFERENCES

**Am. Jur.** — 39 Am. Jur. 2d, Health, § 90 et seq.  
**C.J.S.** — 39A C.J.S., Health and Environment, §§ 88, 89.

**39-608. Transfer of body fluid which may contain the HIV virus — Punishment — Definitions — Defenses.** — (1) Any person who exposes another in any manner with the intent to infect or, knowing that he or she is or has been afflicted with acquired immunodeficiency syndrome (AIDS), AIDS related complexes (ARC), or other manifestations of human immunodeficiency virus (HIV) infection, transfers or attempts to transfer any of his or her body fluid, body tissue or organs to another person is guilty of a felony and shall be punished by imprisonment in the state prison for a period not to exceed fifteen (15) years, by fine not in excess of five thousand dollars (\$5,000), or by both such imprisonment and fine.

(2) Definitions. As used in this section:

(a) "Body fluid" means semen (irrespective of the presence of spermatozoa), blood, saliva, vaginal secretion, breast milk, and urine.

(b) "Transfer" means engaging in sexual activity by genital-genital contact, oral-genital contact, anal-genital contact; or permitting the use of a hypodermic syringe, needle, or similar device without sterilization; or giving, whether or not for value, blood, semen, body tissue, or organs to a person, blood bank, hospital, or other medical care facility for purposes of transfer to another person.

(3) Defenses:

(a) Consent. It is an affirmative defense that the sexual activity took place between consenting adults after full disclosure by the accused of the risk of such activity.

(b) Medical advice. It is an affirmative defense that the transfer of body fluid, body tissue, or organs occurred after advice from a licensed physician that the accused was noninfectious.



**History.**

I.C., § 39-608, as added by 1988, ch. 151,  
§ 1, p. 271.

**STATUTORY NOTES****Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

**JUDICIAL DECISIONS****ANALYSIS**

Double jeopardy.  
Elements required.  
Sentence upheld.

**Double Jeopardy.**

The district court did not err in ruling that defendant's prosecution for the crime of lewd conduct, § 18-1508, was not barred by double jeopardy because of his previous prosecution for the crime of transferring the HIV virus, which ended in a sua sponte mistrial, where the essential elements of the lewd conduct charge did not constitute a violation of the HIV offense because the state did not produce evidence of defendant's conduct as a knowing carrier of HIV. *State v. Lewis*, 123 Idaho 336, 848 P.2d 394 (1993).

**Elements Required.**

In order to find the defendant guilty of transferring body fluid which may have contained the HIV virus, the jury needed to conclude only that the defendant knowingly transferred or attempted to transfer his body fluid to the victim without first informing her of his HIV status. *State v. Thomas*, 133 Idaho 172, 983 P.2d 245 (Ct. App. 1999).

Defendant was properly convicted of transferring body fluid that might contain the human immunodeficiency virus (HIV) after engaging in oral sex with a woman without advising her of his HIV status. One can transfer one's body fluid via oral-genital contact and "body fluid" includes saliva. *State v. Mubita*, 145 Idaho 925, 188 P.3d 867 (2008).

**Sentence Upheld.**

Where the defendant had previous sexual encounters while HIV positive without informing his partner, and the current offense for which he was convicted demonstrated his lack of regard for the health and safety of others when those interests were in competition with the fulfillment of his own personal desires, then there was no abuse of discretion in the court's imposition of a fixed seven-year sentence followed by eight years indeterminate. *State v. Thomas*, 133 Idaho 172, 983 P.2d 245 (Ct. App. 1999).

**39-609. Declaration of policy.** — The legislature hereby declares that infection with human immunodeficiency virus, the virus which causes acquired immune deficiency syndrome (AIDS), is an infectious and communicable disease that endangers the population of this state. The legislature further declares that reporting of HIV infection to public health officials is essential to enable a better understanding of the disease, the scope of exposure, the impact on the community, and the means of control and that efforts to control the disease should include public education, counseling, and voluntary testing and that restrictive enforcement measures should be used only when necessary to protect the public health. It is hereby declared to be the policy of this state that an effective program of preventing AIDS must maintain the confidentiality of patient information and restrict the use of such information solely to public health requirements. This confidentiality is essential so that infected persons are encouraged to reveal their condition to persons who have a legitimate need to know in order that they may assist the patient. Conversely, there is a need for certain individuals to know of the patient's condition so that they may be protected from the

disease or protect themselves and others closely associated with them or with the patient. The legislature believes that the balancing of the need to know by certain individuals in relationship to the need to maintain confidentiality to encourage reporting is essential to control the spread of the disease. This balancing cannot be fully codified in statutory law and must be left to the judgment and discretion of public health officials. If in the judgment of public health authorities an imminent danger to the public health exists due to an individual having a disease enumerated in section 39-601, Idaho Code, public health authorities shall take such action as is authorized in this chapter and as is necessary to prevent danger to the public health. Persons who have a legitimate need to know may include health care personnel, doctors, nurses, dentists, persons providing emergency medical services, morticians, lab technicians and school authorities. This is not intended to limit the usual and customary exchange of information between health care providers.

**History.**

I.C., § 39-609, as added by 1988, ch. 45,  
§ 5, p. 50; am. 1990, ch. 143, § 3, p. 322.

**STATUTORY NOTES****Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

**OPINIONS OF ATTORNEY GENERAL**

With regard to inmates who are HIV positive, or who have ARC or AIDS, the duty of the Idaho department of correction to inmates and staff is to take reasonable measures to ensure the safety of both. No greater liability

is created by reasonably restricting access to patient information. In fact, under some circumstances, failure to protect the confidentiality of such information could expose the department to liability. OAG 89-6.

**39-610. Disclosure of HIV and HBV reporting information. —**

(1) Confidential public health record as described in section 39-606, Idaho Code, shall be subject to disclosure according to chapter 3, title 9, Idaho Code, shall not be discoverable, and shall not be compelled to be produced in any civil or administrative hearing.

(2) State or local health authorities may contact and advise those persons who, in the judgment of health authorities, have been exposed to the HIV (human immunodeficiency virus) or hepatitis B (HBV) infections.

(3) The department of health and welfare shall, in a manner established by rules and regulations, accept from persons involved in providing emergency or medical services reports of significant exposures to the blood or body fluids of a patient or deceased person. The department of health and welfare shall promulgate rules and regulations defining the term "significant exposure" as used in this section. Upon receipt of a report made pursuant to section 39-602, Idaho Code, confirming the presence of HIV or HBV virus in a patient or a deceased person, the director of the department of health and welfare, or his designee, shall immediately contact and advise any and all persons who, on the basis of information then or thereafter

reported to the department, have had a significant exposure to the blood or body fluids of that infected patient or deceased person. The significantly exposed person shall be informed only that he may have been exposed to HIV or HBV, as the case may be, and thereafter advised of whatever prophylactic and testing procedures are appropriate. The significantly exposed person shall not be informed of the name of the infected patient or deceased person. Additionally, the department of health and welfare shall, to the greatest extent consistent with public health requirements, maintain the confidentiality of the identity of the significantly exposed person.

(4) Public health authorities may disclose personally identifying information in public health records, as described in section 39-606, Idaho Code, to other local or state public health agencies when the confidential information is necessary to carry out the duties of the agency in the investigation, control and surveillance of disease, as determined by the state board of health and welfare, or as otherwise authorized by law.

(5) Nothing in this chapter imposes liability or criminal sanction for disclosure or nondisclosure of the results of a blood test to detect HIV or HBV virus in accordance with any reporting requirements of the department of health and welfare.

#### **History.**

I.C., § 39-610, as added by 1988, ch. 45,

§ 6, p. 50; am. 1990, ch. 143, § 4, p. 322; am. 1990, ch. 213, § 39, p. 480.

### **STATUTORY NOTES**

#### **Cross References.**

Board of health and welfare, § 56-1005.

#### **Amendments.**

This section was amended by two 1990 acts which appear to be compatible and have been compiled together.

The 1990 amendment, by ch. 143, § 4, added "or hepatitis B (HBV) infections" to the end of subsection (2); added the present subsection (3) and redesignated the former subsections (3) and (4) as the present subsections (4) and (5), respectively; in the present subsection (5), inserted "or HBV" following "detect HIV."

The 1990 amendment, by ch. 213, § 39, in subsection (1), substituted "Confidential" for "No confidential" at the beginning of the sub-

section, and substituted "shall be subject to disclosure according to chapter 3, title 9, Idaho Code, shall not be discoverable, and shall not be compelled" for "shall be disclosed, shall be discoverable, or compelled"; made the same changes throughout the remainder of the section as the ch. 143 amendment.

#### **Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

#### **Effective Dates.**

Section 111 of S.L. 1990, ch. 213 as amended by § 16 of S.L. 1991, ch. 329 provided that §§ 3 through 45 and 48 through 110 of the act should take effect July 1, 1993 and that §§ 1, 2, 46 and 47 should take effect July 1, 1990.

## **CHAPTER 7**

# **ADVERTISING CURES FOR SEXUAL DISORDERS**

#### **SECTION.**

39-701 — 39-704. [Repealed.]



**39-701 — 39-704. Advertising treatments unlawful — Exemptions — Penalty for violation. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

The following sections were repealed by S.L. 1994, ch. 137, § 1, effective July 1, 1994:  
§ 39-701. (1921, ch. 201, § 1, p. 408; I.C.A., § 38-601).  
§ 39-702. (1921, ch. 201, § 2, p. 408; I.C.A., § 38-602).

§ 39-703. (1921, ch. 201, § 3, p. 408; I.C.A., § 38-603).  
§ 39-704. (1921, ch. 201, § 4, p. 408; I.C.A., § 38-604).

**CHAPTER 8**

**CONTRACEPTIVES AND PROPHYLACTICS**

**SECTION.**

39-801. Registration required to sell and distribute prophylactics and contraceptives — Fees.  
39-802. Manufacturer to be identified — Compliance with standards — Rules and regulations.  
39-803. Revocation or suspension of licenses

**SECTION.**

— Arrest of violators — Seizure and confiscation.  
39-804. Penalty for violations.  
39-805 — 39-807. [Repealed.]  
39-808. [Amended and redesignated.]  
39-809, 39-810. [Repealed.]

**39-801. Registration required to sell and distribute prophylactics and contraceptives — Fees.** — (1) Every wholesaler or manufacturer of prophylactics or contraceptives who distributes in the state shall annually submit an application for registration to the board of pharmacy:

(a) The application shall be made in writing on a form prepared by the board and be accompanied by an appropriate fee set by the board.

(b) Registrations shall be in effect for one (1) year from January 1 of each year. Registrations are not transferable. All fees collected by the state board of pharmacy shall be remitted to the state treasurer and placed to the credit of the pharmacy fund [account].

(c) Registrations shall be conspicuously displayed and the wholesaler or manufacturer to whom they are issued shall be open to inspection by the board or other authorized persons designated by the board.

(d) Each application for registration shall include a list of all products or brands of prophylactics and contraceptives the applicant wishes to have approved for sale in the state.

(2) At the time of making application for registration (and at any time a new product is to be distributed in this state) every manufacturer or wholesaler (who distributes products of a different brand than those authorized for sale under a manufacturer's registration) which intends to distribute contraceptive and prophylactic products, shall furnish to the board the names of such products and in addition:

(a) The board may require proof to be furnished by the manufacturer or wholesaler that these products have received approval in accordance with the Federal Food, Drug and Cosmetic Act and regulations thereunder (title 21 USC & CFR).

(b) The requirements under the Federal Food, Drug and Cosmetic Act and regulations thereunder (title 21 USC & CFR) relating to the products

mentioned in subsection (2) of this section are adopted by reference and made a part hereof.

**History.**

I.C., § 39-801, as added by 1982, ch. 358,  
§ 2, p. 906.

**STATUTORY NOTES****Cross References.**

Board of pharmacy, § 54-1706.  
State treasurer, § 67-1201 et seq.

**Prior Laws.**

Former §§ 39-801 to 39-804, which comprised 1937, ch. 72, §§ 1 to 4, p. 95; am. 1949, ch. 31, § 1, p. 52; am. 1974, ch. 23, § 100, p. 633, were repealed by S.L. 1982, ch. 358, § 1, effective April 2, 1982.

**Federal References.**

The Federal Food, Drug and Cosmetic Act is codified at 21 USCS § 301 et seq.

**Compiler's Notes.**

The bracketed insertion at the end of subdivision (1)(b) was added by the compiler to correct the name of the referenced account. See § 54-1720.

The words in parentheses so appeared in the law as enacted.

**RESEARCH REFERENCES**

**A.L.R.** — Forbidding or regulating sale or advertisement of abortives, birth-control in- formation, and contraceptives. 96 A.L.R.3d 955.

**39-802. Manufacturer to be identified — Compliance with standards — Rules and regulations.** — Only such goods of the class specified in section 39-801, Idaho Code, shall be sold or dispensed as specifically identify the manufacturer thereof by firm name and address on the appliance or container in which the goods are sold or intended to be sold, nor shall any such goods be sold or dispensed unless the same shall comply with the standards as to such goods, respecting grade and quality, as may be prescribed by the board of pharmacy. The board of pharmacy is hereby authorized to adopt and promulgate such rules and regulations and establish standards relating to and governing such appliances and medicinal preparations and the sale or other dispensation thereof as may be necessary in the interest of disease prevention and in carrying out the purposes of this chapter.

**History.**

I.C., § 39-802, as added by 1982, ch. 358,  
§ 3, p. 906.

**STATUTORY NOTES****Cross References.**

Board of pharmacy, § 54-1706.

**Prior Laws.**

Former § 39-802 was repealed. See Prior Laws, § 39-801.

**39-803. Revocation or suspension of licenses — Arrest of violators — Seizure and confiscation.** — The state board of pharmacy shall have the power to revoke or suspend registrations, upon a fair hearing, for

violation of any of the provisions of this chapter; to cause the arrest of any person or persons violating the provisions of this chapter; to seize, and upon fair hearing, confiscate stocks illegally held and to seize, and after fair hearing, confiscate any prophylactic or contraceptive products not conforming to standards set by this chapter, and to make seizure, and after fair hearing, confiscation of any mechanical device or vending machine containing prophylactics or contraceptives coming within the provisions of this chapter, and cause the arrest of the owner of such machine and the occupier or owner of the premises where seizure is made, for violation of the provisions of this chapter.

**History.**

I.C., § 39-803, as added by 1982, ch. 358,  
§ 4, p. 906.

**STATUTORY NOTES**

**Cross References.**

Board of pharmacy, § 54-1706.

**Prior Laws.**

Former § 39-803 was repealed. See Prior  
Laws, § 39-801.

**39-804. Penalty for violations.** — Any person, firm, or corporation, or any member or employee of any firm or any officer, director or employee of a corporation who violates or who aids or abets in the violation of any of the provisions of this chapter, or in any rule or regulation of the board of pharmacy promulgated hereunder, shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided by section 18-113, Idaho Code.

**History.**

1937, ch. 72, § 8, p. 95; am. 1949, ch. 31, § 1, p. 52; am. 1974, ch. 23, § 102, p. 633; am. and redesign. 1982, ch. 358, § 5, p. 906.

**STATUTORY NOTES**

**Cross References.**

Board of pharmacy, § 54-1706.

**Prior Laws.**

Former § 39-804 was repealed. See Prior  
Laws, § 39-801.

**Compiler's Notes.**

This section was formerly compiled as § 39-808.

**Effective Dates.**

Section 6 of S.L. 1982, ch. 358 declared an emergency. Approved April 2, 1982.

**39-805 — 39-807. Retail licenses and sales — Compliance with standards, rules and regulations — Display and advertising unlawful. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised 1937, ch. 72, §§ 5 to 7, p. 95; am. 1949, ch. 31, § 1, p. 52; am. 1971, ch. 160, § 1, p. 779; am. 1974, ch. 23, § 101, p. 633, were repealed by S.L. 1982, ch. 358, § 1, effective April 2, 1982.



**39-808. [Amended and redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 39-808 was amended and redes-

ignated as § 39-804 by S.L. 1982, ch. 358, § 5.

**39-809, 39-810. Suppositories and other articles — Revocation or suspension of licenses — Arrest — Seizure and confiscation. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

These sections, which comprised 1937, ch. 72, §§ 9, 10, as added by 1939, ch. 187, § 1, p.

353; am. 1949, ch. 31, § 1, p. 52; am. 1974, ch. 23, § 103, p. 633 were repealed by S.L. 1982, ch. 358, § 1, effective April 2, 1982.

**CHAPTER 9****PREVENTION OF BLINDNESS AND OTHER PREVENTABLE DISEASES IN INFANTS****SECTION.**

- 39-901. Inflammation of eyes of newborn defined.
- 39-902. Report to health officer — Warning of danger — Treatment of indigent cases.
- 39-903. Germicide to be instilled in eyes of newborn baby.
- 39-904. Statement in report of birth.
- 39-905. Duties of local health officer.
- 39-906. Duties of director.
- 39-907. Birth reports not showing compli-

**SECTION.**

- ance — Certification to prosecuting attorney.
- 39-908. Penalty for violation.
- 39-909. Tests for phenylketonuria and preventable diseases in newborn infants.
- 39-910. Duties of director in enforcing act.
- 39-911. Violations — Penalty.
- 39-912. Exemption because of religious belief.

**39-901. Inflammation of eyes of newborn defined.** — Any inflammation, swelling, or unusual redness in either one (1) or both eyes of any infant, either apart from, or together with any unnatural discharge from the eye or eyes of such infant, independent of the nature of the infection, if any, occurring at any time within two (2) weeks after the birth of such infant, shall be known as "inflammation of the eyes of the newborn" (Ophthalmia neonatorum).

**History.**

1921, ch. 233, § 1, p. 522; I.C.A., § 38-701.

**STATUTORY NOTES****Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

**39-902. Report to health officer — Warning of danger — Treatment of indigent cases.** — It shall be the duty of any physician, surgeon, obstetrician, midwife, nurse, maternity home or hospital of any nature,

parent, relative and persons attendant on or assisting in any way whatsoever any infant, or the mother of any infant at childbirth, or any time within two (2) weeks after childbirth, knowing the condition hereinabove defined to exist, immediately to report such fact in writing, to the local health officer of the county, city, town, magisterial district or whatever other political division there may be within which the infant or the mother of any infant may reside. Midwives shall immediately report conditions to some qualified practitioner of medicine and thereupon withdraw from the case except as they may act under the physician's instructions. On receipt of such report, the health officer, or the physician notified by a midwife, shall immediately give to the parents or persons having charge of such infant a warning of the dangers to the eye or eyes of said infant, and shall for indigent cases provide the necessary treatment at the expense of said county, city, or town.

**History.**

1921, ch. 233, § 2, p. 522; I.C.A., § 38-702.

**39-903. Germicide to be instilled in eyes of newborn baby.** — It shall be unlawful for any physician or midwife practicing midwifery to neglect, or otherwise fail to instill or have instilled immediately upon its birth, in the eyes of the newborn babe, some germicide of proved efficiency in preventing the development of ophthalmia neonatorum.

**History.**

1921, ch. 233, § 3, p. 522; I.C.A., § 38-703.

**39-904. Statement in report of birth.** — Every physician or midwife shall, in making a report of a birth, state whether or not the above germicide was instilled into the eyes of said infant.

**History.**

1921, ch. 233, § 4, p. 522; I.C.A., § 38-704.

## STATUTORY NOTES

**Cross References.**

Registration of births, § 39-241 et seq.

**39-905. Duties of local health officer.** — It shall be the duty of the local health officer:

1. To investigate, or have investigated, each case as filed with him in pursuance of the law, and any other cases as may come to his attention.
2. To report all cases of inflammation of the eyes of the newborn, and the result of all such investigations as the state board of health and welfare shall direct.
3. To conform to such other rules and regulations as the state board of health and welfare shall promulgate for his further guidance.

**History.**

1921, ch. 233, § 5, p. 522; I.C.A., § 38-705;  
am. 1974, ch. 23, § 104, p. 633.

## STATUTORY NOTES

**Cross References.**

Board of health and welfare, § 56-1005.

**39-906. Duties of director.** — It shall be the duty of the director of the department of health and welfare:

1. To enforce the provisions of this chapter.
2. To administer such rules and regulations as shall, under this chapter, be necessary for the purpose of this chapter, and such as the state board of health and welfare may deem necessary for the further and proper guidance of local health officers.
3. To publish and promulgate such further advice and information concerning the dangers of inflammation of the eyes of the newborn as is necessary for prompt and effective treatment.
4. To furnish copies of this law to all physicians and midwives as may be engaged in the practice of obstetrics, or assisting at childbirth.
5. To keep a proper record of any and all cases of inflammation of the eyes of the newborn as shall be filed in the office of the state board of health and welfare in pursuance of this law, and as may come to their attention in any way, and to constitute such records a part of the annual report to the governor.
6. To report any and all violations of this chapter as may come to their attention to the prosecuting attorney of the county wherein said misdemeanor may have been committed, and to assist said official in any way possible, as by securing necessary evidence, et cetera.
7. To furnish birth certificates which shall include the question "Did you comply with section six [three] of this act? If so, state what solution used."

**History.**

1921, ch. 233, § 6, p. 522; I.C.A., § 38-706;  
am. 1974, ch. 23, § 105, p. 633.

## STATUTORY NOTES

**Cross References.**

Board of health and welfare, § 56-1005.

**Compiler's Notes.**

In subsection 7 of this section the question, "Did you comply with section six of this act? If so, state what solution used," is printed as it appears in the session laws. It is probable,

however, that section three (codified as § 39-903) was intended, and therefore the word "three" was inserted in brackets by the compiler.

The words "this act" refer to S.L. 1921, ch. 233, which is codified as §§ 39-901 to 39-908.

**39-907. Birth reports not showing compliance — Certification to prosecuting attorney.** — It shall be the duty of the clerk of the county court of each county on or before the fifteenth day of each month to certify to the prosecuting attorney of his county all reports of births filed during the preceding calendar month which fail to show that the solution hereinbefore provided for was instilled.

**History.**

1921, ch. 233, § 7, p. 522; I.C.A., § 38-707.



**39-908. Penalty for violation.** — Whoever being a physician, surgeon, midwife, obstetrician, nurse, manager or person in charge of a maternity home or hospital, parent, relative or person attending upon or assisting at the birth of an infant, violates any of the provisions of this chapter, shall be deemed guilty of misdemeanor, and upon conviction thereof shall be fined a sum of not less than ten dollars (\$10.00) nor more than \$100.00.

**History.**

1921, ch. 233, § 8, p. 522; I.C.A., § 38-708.

**39-909. Tests for phenylketonuria and preventable diseases in newborn infants.** — It shall be the duty of the administrative officer or other person in charge of each hospital or other institution caring for newborn infants and the person responsible for the registration of the birth of such infant under section 39-256 [§ 39-255], Idaho Code, to cause to have administered to every newborn infant in its or his care a test for phenylketonuria and such other tests for preventable diseases as prescribed by the state board of health and welfare. The person administering such tests shall make such reports of the results thereof as required by the state board of health and welfare.

**History.**

1965, ch. 223, § 1, p. 510; am. 1974, ch. 23, § 106, p. 633.

### STATUTORY NOTES

**Cross References.**

Board of health and welfare, § 56-1005.

**Compiler's Notes.**

The bracketed reference "§ 39-255" was in-

serted by the compiler to account for the fact that § 39-256 was amended and redesignated as § 39-255 by § 15 of S.L. 1983, ch. 7.

**39-910. Duties of director in enforcing act.** — It shall be the duty of the director of the department of health and welfare:

1. To enforce the provisions of this act.
2. To prescribe what tests shall be made for preventable diseases in addition to the test for phenylketonuria.
3. To publish rules of the board prescribing the time and manner of administering tests required by this act.
4. To furnish copies of this act and the rules promulgated hereunder to physicians, hospitals or other institutions or persons required by this act to have tests administered to newborn infants.
5. To maintain a record of all infants found to have phenylketonuria or other preventable diseases and to supervise local health agencies in the treatment and cure of such infants.
6. To disseminate information and advice to the public concerning the dangers and effects of phenylketonuria and other preventable diseases and their detection and treatment.

**History.**

1965, ch. 223, § 2, p. 510; am. 1974, ch. 23,  
§ 107, p. 633.

**STATUTORY NOTES****Cross References.**

Director of the department of health and  
welfare, § 56-1003.

223, §§ 1 to 4, which are compiled as §§ 39-  
909 to 39-912.

**Compiler's Notes.**

The words "this act" refer to S.L. 1965, ch.

**39-911. Violations — Penalty.** — Any person who violates the provisions of this act or rules promulgated by the state board of health and welfare thereunder, shall be guilty of a misdemeanor.

**History.**

1965, ch. 223, § 3, p. 510; am. 1974, ch. 23,  
§ 108, p. 633.

**STATUTORY NOTES****Cross References.**

Board of health and welfare, § 56-1005.

**Effective Dates.**

Section 182 of S.L. 1974, ch. 23 provided the  
act should be in full force and effect on and  
after July 1, 1974.

**Compiler's Notes.**

The words "this act" refer to S.L. 1965, ch.  
223, §§ 1 to 4, which are compiled as §§ 39-  
909 to 39-912.

**39-912. Exemption because of religious belief.** — The provisions of this act shall not apply to any child whose parent or guardian objects thereto on the grounds that it conflicts with the tenets or practices of a recognized church or religious denomination of which said parent or guardian is an adherent or member.

**History.**

1965, ch. 223, § 4, p. 510.

**STATUTORY NOTES****Compiler's Notes.**

The words "this act" refer to S.L. 1965, ch.

223, §§ 1 to 4, which are compiled as §§ 39-  
909 to 39-912.

**CHAPTER 10****PREVENTION OF CONGENITAL SYPHILIS****SECTION.**

39-1001. Serological test of pregnant or recently-delivered women.

39-1002. Procedure when woman not attended by licensed physician.

39-1003. Standard serological test defined.

**SECTION.**

39-1004. Laboratory report of test.

39-1005. Reports of births and stillbirths to  
note making of test.

39-1006. Penalty for violations.

**39-1001. Serological test of pregnant or recently-delivered women.** — Every licensed physician attending a pregnant woman for a

condition relating to her pregnancy, or at delivery, or after delivery for a condition relating to her pregnancy, shall in the case of every woman so attended, take or cause to be taken a sample of blood of such woman at the time of first examination or within fifteen (15) days thereafter, and shall submit such sample to the laboratory of the department of health and welfare or to a laboratory approved by the director of the department, for a standard serological test for syphilis. In submitting such sample to the laboratory, the physician shall specify whether it is for a prenatal test or a test following recent delivery. The laboratory of the department of health and welfare shall analyze such sample upon the request of any licensed physician and may collect a fee for the performance of such analyses.

**History.**

1943, ch. 26, § 1, p. 53; am. 1970, ch. 26,  
§ 1, p. 52; am. 1974, ch. 23, § 109, p. 633.

**STATUTORY NOTES**

**Cross References.**

Control of venereal diseases generally, Department of health and welfare, § 56-1001 et seq.  
§ 39-601 et seq.

**39-1002. Procedure when woman not attended by licensed physician.** — Every other person attending a pregnant or recently delivered woman in the state, but not permitted by law to take blood samples, shall within fifteen (15) days of the first examination cause a sample of blood of such woman to be taken by a licensed physician and have the sample submitted to the laboratory of the state department of health and welfare for a standard serological test for syphilis, or to a laboratory approved by said board [department].

**History.**

1943, ch. 26, § 2, p. 53; am. 1974, ch. 23,  
§ 110, p. 633.

**STATUTORY NOTES**

**Cross References.**

Department of health and welfare, § 56-223, §§ 1 to 4, which are compiled as §§ 39-909 to 39-912.

**Compiler's Notes.**

The words "this act" refer to S.L. 1965, ch. The bracketed insertion at the end of the section was added by the compiler to conform to the 1974 amendment of this section.

**39-1003. Standard serological test defined.** — For the purpose of sections 39-1001 — 39-1006, Idaho Code, a standard serological test shall be a test for syphilis approved by the state board of health and welfare.

**History.**

1943, ch. 26, § 3, p. 53; am. 1974, ch. 23,  
§ 111, p. 633.



## STATUTORY NOTES

**Cross References.**

Board of health and welfare, § 56-1005.

**39-1004. Laboratory report of test.** — The laboratory analyzing the blood sample shall furnish to the physician offering the sample a detailed report of the standard serological test, and including the result of the test. If the laboratory is not operated by the state department of health and welfare, a copy of such report shall be filed with the department. The report shall be held in absolute confidence, and shall not be open to public inspection.

**History.**

1943, ch. 26, § 4, p. 53; am. 1974, ch. 23,  
§ 112, p. 633.

## STATUTORY NOTES

**Cross References.**

Department of health and welfare, § 56-1001 et seq.

act should be in full force and effect on and after July 1, 1974.

**Effective Dates.**

Section 182 of S.L. 1974, ch. 23 provided the

**39-1005. Reports of births and stillbirths to note making of test.** — In reporting every birth and stillbirth, physicians and others required to make such reports shall state on the certificates of birth or death whether a standard serological test for syphilis has been made upon a sample of blood taken from the woman who bore the child for which a certificate is filed, and the approximate date when the sample was taken. The birth or death certificate shall not state the result of the test.

**History.**

1943, ch. 26, § 5, p. 53.

## STATUTORY NOTES

**Cross References.**

Reports of births, § 39-241 et seq.; stillbirths, § 39-260.

**39-1006. Penalty for violations.** — Any person who violates the provisions of sections 39-1001 — 39-1006[, Idaho Code,] shall be guilty of a misdemeanor; provided, however, that every licensed physician or other person attending a pregnant or recently delivered woman, who requests such sample in accordance with the provisions of sections 39-1001 — 39-1006[, Idaho Code], and whose request is refused, shall not be guilty of a misdemeanor.

**History.**

1943, ch. 26, § 6, p. 53.

## STATUTORY NOTES

**Cross References.**

Penalty for misdemeanor when not otherwise provided, § 18-113.

**Compiler's Notes.**

The bracketed insertions in this section

were added by the compiler to conform to the statutory citation style.

## CHAPTER 11

## BASIC DAY CARE LICENSE

## SECTION.

- 39-1101. Policy.
- 39-1102. Definitions.
- 39-1103. Licensing authority.
- 39-1104. Application for license — Fire safety and health inspections.
- 39-1105. Criminal history checks.
- 39-1106. Issuance of license — Renewal.
- 39-1107. Fees.
- 39-1108. Local option.
- 39-1109. Safety standards.
- 39-1110. Health standards.
- 39-1111. Rules authorized.
- 39-1112. Visitation.

## SECTION.

- 39-1112A. Access to information.
- 39-1113. Denial, suspension or revocation of license.
- 39-1114. Limited applications.
- 39-1115. Misdemeanor.
- 39-1116. Prosecution.
- 39-1117. No liability to state or political subdivisions.
- 39-1118. Immunization required.
- 39-1119. Training requirements.
- 39-1120. Nondelegable duties and responsibilities.

**39-1101. Policy.** — It is hereby declared to be the policy of this state to establish a minimum statewide system for the protection of children in daycare facilities. This system is intended to establish minimum standards, while still leaving primary responsibility for evaluation and selection of daycare services with parents. The minimum standards established by this chapter shall not be construed as preempting more stringent regulation by county or city ordinance.

**History.**

I.C., § 39-1101, as added by 1987, ch. 56, § 1, p. 92; am. 2009, ch. 295, § 1, p. 873.

## STATUTORY NOTES

**Prior Laws.**

Former §§ 39-1101 to 39-1104, which comprised S.L. 1923, ch. 130, §§ 1 to 3, 5, p. 190; I.C.A., §§ 38-801 to 38-804, were repealed by S.L. 1951, ch. 138, § 1.

**Amendments.**

The 2009 amendment, by ch. 295, in the first sentence, substituted "daycare facilities"

for "day care centers"; and, in the second sentence, substituted "daycare services" for "day care services."

**Effective Dates.**

Section 20 of S.L. 2009, ch. 295 provided that the act should take effect on and after January 1, 2010.

## RESEARCH REFERENCES

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 1.

**39-1102. Definitions.** — As used in this chapter:

(1) "Board" means the Idaho board of health and welfare.

(2) "Child" means a person less than thirteen (13) years of age.

(3) "Daycare" means care and supervision provided for compensation during part of a twenty-four (24) hour day, for a child or children not related by blood, marriage or legal guardianship to the person or persons providing the care, in a place other than the child's or children's own home or homes.

(4) "Daycare center" means a place or facility providing daycare for compensation for thirteen (13) or more children.

(5) "Daycare facility" means a place or facility providing daycare services for compensation to seven (7) or more children not related to the provider.

(6) "Department" means the Idaho department of health and welfare.

(7) "Employee" means any person working for compensation in a facility that provides daycare.

(8) "Family daycare home" means a home, place, or facility providing daycare for six (6) or fewer children.

(9) "Group daycare facility" means a home, place, or facility providing daycare for seven (7) to twelve (12) children.

(10) "Group size" means the maximum number of children in one (1) group or classroom.

(11) "Mixed age group" means a care group that includes children of multiple ages.

(12) "Ratio" means the number of staff required to supervise a certain number of children.

(13) "Single age group" means a care group that includes children of similar age.

(14) "Training" means continuing education in child development areas relating to child care. Training can be acquired through a variety of methods including, but not limited to, the viewing of audio visual materials, correspondence courses, community workshops and in-house training.

#### **History.**

I.C., § 39-1102, as added by 1987, ch. 56,  
§ 1, p. 92; am. 2009, ch. 295, § 2, p. 873.

### **STATUTORY NOTES**

#### **Cross References.**

Board of health and welfare, § 56-1005.

#### **Prior Laws.**

Former § 39-1102 was repealed. See Prior Laws, § 39-1101.

#### **Amendments.**

The 2009 amendment, by ch. 295, rewrote

the section to the extent that a detailed comparison is impracticable, adding the definitions in subsections (5) and (10) to (14).

#### **Effective Dates.**

Section 20 of S.L. 2009, ch. 295 provided that the act should take effect on and after January 1, 2010.

**39-1103. Licensing authority.** — The department is hereby authorized and directed to issue "basic daycare licenses" as provided in this chapter. The department is authorized to establish procedures for issuing licenses to daycare facilities which shall be maintained and operated in conformity with the standards authorized in this chapter. Nothing in this chapter shall be construed to limit or restrict the teaching of religious



doctrines, values, or tenets in a facility licensed under the provisions of this chapter. The provisions of this chapter shall not apply to:

(1) The occasional care of a neighbor's, relative's or friend's child or children by a person not ordinarily in the business of providing daycare;

(2) The operation of a private school or religious school for educational purposes for children over four (4) years of age or a religious kindergarten;

(3) The provision of occasional care exclusively for children of parents who are simultaneously in the same building;

(4) The operation of day camps, programs and religious schools for less than twelve (12) weeks during a calendar year or not more often than once a week; or

(5) The provision of care for children of a family within the second degree of relationship.

#### History.

I.C., § 39-1103, as added by 1987, ch. 56,  
§ 1, p. 92; am. 2009, ch. 295, § 3, p. 873.

#### STATUTORY NOTES

#### Prior Laws.

Former § 39-1103 was repealed. See Prior Laws, § 39-1101.

#### Amendments.

The 2009 amendment, by ch. 295, in the introductory paragraph, in the first sentence, deleted "of health and welfare" following "department" and substituted "daycare licenses" for "day care licenses," and, in the second sentence, substituted "daycare facilities" for "day care centers"; in subsection (1), substi-

tuted "business of providing daycare" for "business of child care"; and, in subsection (5), substituted "care for children of a family within the second degree of relationship" for "care for children of only one (1) immediate family in addition to the person's own children."

#### Effective Dates.

Section 20 of S.L. 2009, ch. 295 provided that the act should take effect on and after January 1, 2010.

**39-1104. Application for license — Fire safety and health inspections.** — (1) Application. A person who wishes to operate a daycare facility shall be a minimum of eighteen (18) years of age, shall submit an application on the forms provided by the department, and shall obtain the required certificates of inspection as provided herein.

(2) Inspections. A person who wishes to operate a daycare facility shall submit: (a) a certificate of a fire inspection of the proposed center, conducted by a fire department or fire district official, establishing compliance with the minimum standards specified in section 39-1109, Idaho Code; and (b) a health and safety inspection of the proposed facility conducted by a qualified inspector as designated by the department, establishing compliance with the minimum standards specified in sections 39-1109 and 39-1110, Idaho Code.

(3) Continued compliance and reinspection. Daycare facilities shall at all times maintain compliance with the safety and health requirements identified in this chapter. The department may cause any daycare facility to be reinspected during the term of a license for safety and health compliance as determined necessary by the department. No charge for any reinspection after the initial inspection in any license period shall be made to the daycare facility.

**History.**

I.C., § 39-1104, as added by 1987, ch. 56,  
§ 1, p. 92; am. 2009, ch. 295, § 4, p. 873.

**STATUTORY NOTES****Prior Laws.**

Former § 39-1104 was repealed. See Prior Laws, § 39-1101.

**Amendments.**

The 2009 amendment, by ch. 295, rewrote the section to the extent that a detailed comparison is impracticable.

**Effective Dates.**

Section 6 of S.L. 1987, ch. 56 read: "In order

to achieve an orderly transition pursuant to this act, the provisions of this act authorizing the promulgation of rules, fees and forms shall be in full force and effect on and after October 1, 1987, and the remaining portions of this act shall be in full force and effect on and after March 1, 1988."

Section 20 of S.L. 2009, ch. 295 provided that the act should take effect on and after January 1, 2010.

**39-1105. Criminal history checks.** — (1) The department shall obtain from the owner a criminal history check on the owners, operators and employees of a daycare facility who have direct contact with children, and on all other individuals thirteen (13) years of age or older who have unsupervised direct contact with children or are regularly on the premises of a daycare facility. The criminal history check shall include the following for all persons subject to the provisions of this section who are eighteen (18) years of age or older:

- (a) Statewide criminal identification bureau;
- (b) Federal bureau of investigation (FBI) criminal history;
- (c) National crime information center; and
- (d) Statewide child abuse registry.

(2) Criminal history checks on those persons under eighteen (18) years of age shall include a check of the juvenile justice records of adjudications of the magistrate division of the district court, county probation services and department records as authorized by the minor and his parent or guardian.

(3) Notwithstanding the provisions of section 39-1103, Idaho Code, which provide for exemption from the provisions of this chapter, any person who owns, operates or is employed by a private school for educational purposes for children four (4) through six (6) years of age or a private kindergarten shall comply with the provisions of this section.

**History.**

I.C., § 39-1105, as added by 1987, ch. 56,  
§ 1, p. 92; am. 1992, ch. 90, § 1, p. 279; am.

1994, ch. 453, § 1, p. 1442; am. 2000, ch. 191,  
§ 1, p. 472; am. 2009, ch. 295, § 5, p. 873.

**STATUTORY NOTES****Cross References.**

Bureau of criminal identification, § 67-3003.

**Amendments.**

The 2009 amendment, by ch. 295, in the introductory paragraph in subsection (1), inserted "from the owner," substituted "daycare facility" for "day care center," "all other individuals thirteen (13) years of age" for "all volunteers and other individuals twelve (12) years of age," and "direct contact with chil-

dren or are regularly on the premises of a daycare facility" for "direct contact with children in a day care center"; in subsection (1)(d), substituted "registry" for "register"; and, in subsection (2), deleted "of health and welfare" following "department."

**Compiler's Notes.**

For national crime information center, see <http://www.fas.org/irp/agency/doj/fbi/is/ncic.htm>.

**Effective Dates.** that the act should take effect on and after  
Section 20 of S.L. 2009, ch. 295 provided January 1, 2010.

**39-1106. Issuance of license — Renewal.** — (1) Upon receipt of the application, inspection certificates and the criminal history, the department shall, upon a finding of compliance with the minimum standards set forth in this chapter, issue a basic daycare license to the applicant. The license shall be valid for two (2) years and shall be posted in a conspicuous place at the daycare facility.

(2) The department shall send a renewal application to the owner of the daycare facility no later than ninety (90) days prior to the expiration of an existing license. The owner shall submit to the department the renewal application with the required renewal fee and a criminal history check prior to the expiration of the existing license. A complete criminal history check shall be provided for any new persons requiring a criminal history check in accordance with section 39-1105, Idaho Code. A limited criminal history check shall be provided for those persons eighteen (18) years of age or older who where [were] previously checked. The limited criminal history check shall include:

- (a) Statewide criminal identification bureau;
- (b) National crime information center; and
- (c) Statewide child abuse registry.

(3) Criminal history checks on those persons under eighteen (18) years of age shall include a check of the juvenile justice records of adjudications of the magistrate division of the district court, county probation services and department records as authorized by the minor and his parent or guardian.

(4) The department shall maintain a list of all licensees for public use.

(5) Submission of a renewal application, fee and required criminal history check shall entitle the daycare facility owner to continue daycare services, subject to action by the department pursuant to section 39-1113, Idaho Code.

**History.** § 1, p. 92; am. 1992, ch. 90, § 2, p. 279; am.  
I.C., § 39-1106, as added by 1987, ch. 56, 2009, ch. 295, § 6, p. 873.

**STATUTORY NOTES**

**Cross References.** <http://www.fas.org/irpl/agency/doj/fb/ilis/ncic.htm>.  
Bureau of criminal identification, § 67-3003.

**Amendments.** The bracketed insertion in the introductory paragraph in subsection (2) was added by the compiler to provide the probable intended word.

The 2009 amendment, by ch. 295, rewrote the section to the extent that a detailed comparison is impracticable.

**Compiler's Notes.** **Effective Dates.**  
Section 20 of S.L. 2009, ch. 295 provided that the act should take effect on and after January 1, 2010.

**39-1107. Fees.** — (1) The department shall establish by rule the maximum total fee to be assessed for a basic daycare license which shall not exceed three hundred twenty-five dollars (\$325) for daycare centers with more than twenty-five (25) children in attendance at any given time, two



hundred fifty dollars (\$250) for daycare centers with thirteen (13) to twenty-five (25) children in attendance at any given time and one hundred dollars (\$100) for group daycare facilities. Criminal history background check fees shall be in addition, but at actual cost. No other fees shall be charged for each license period. The department may allocate the fees to daycare licensing administration costs as it deems appropriate.

(2) The department is authorized to utilize Idaho child care program funds as otherwise allowed by law to pay for the costs associated with licensing of daycare facilities to the extent that fees collected from the facilities do not fully cover such costs. It is the intent of the legislature that licensing fees and Idaho child care program funds shall fully fund daycare facility licensing administration.

**History.**

I.C., § 39-1107, as added by 1987, ch. 56, § 1, p. 92; am. 1992, ch. 72, § 1, p. 208; am.

1993, ch. 23, § 1, p. 83; am. 2009, ch. 295, § 7, p. 873; am. 2011, ch. 274, § 1, p. 744.

**STATUTORY NOTES****Amendments.**

The 2009 amendment, by ch. 295, rewrote the section to the extent that a detailed comparison is impracticable.

The 2011 amendment, by ch. 274, in subsection (1), substituted "three hundred twenty-five dollars (\$325)" for "one hundred seventy-five dollars (\$175)" and inserted "with more than twenty-five (25) children in attendance at any given time, two hundred fifty dollars (\$250) for daycare centers with thirteen (13) to twenty-five (25) children in attendance at any given time" in the first sentence and inserted "background" following "Criminal history" in the second sentence; and in subsection (2) deleted "certification and" preceded

ing "licensing of daycare facilities" in the first sentence.

**Compiler's Notes.**

Section 6 of S.L. 1987, ch. 56 read: "In order to achieve an orderly transition pursuant to this act, the provisions of this act authorizing the promulgation of rules, fees and forms shall be in full force and effect on and after October 1, 1987, and the remaining portions of this act shall be in full force and effect on and after March 1, 1988."

**Effective Dates.**

Section 20 of S.L. 2009, ch. 295 provided that the act should take effect on and after January 1, 2010.

**39-1108. Local option.** — (1) If a city or county, within its respective jurisdiction, has adopted an ordinance for regulation and/or licensing of daycare services, then the provisions of this chapter shall not apply with such city or county unless the ordinance is subsequently repealed. To qualify for exemption, regulation of centers must include a criminal history background check at least as stringent as the check required in section 39-1105, Idaho Code, compliance with safety standards at least as stringent as required in section 39-1109, Idaho Code, compliance with health standards at least as stringent as required in section 39-1110, Idaho Code, compliance with immunization requirements at least as stringent as required in section 39-1118, Idaho Code, and compliance with training requirements at least as stringent as required in section 39-1119, Idaho Code. Cities and counties are hereby granted authority and may adopt ordinances for regulation and/or licensing of daycare services.

(2) For purposes of determining whether or not local options are more stringent than as required in section 39-1109, Idaho Code, a city or county within its respective jurisdiction may, but is not required to, count a child or children of a provider for purposes of determining child:staff ratios.

**History.**

I.C., § 39-1107, as added by 1987, ch. 56, § 1, p. 92; am. 1992, ch. 72, § 1, p. 208; am.

1993, ch. 23, § 1, p. 83; am. 2009, ch. 295, § 8, p. 873; am. 2011, ch. 274, § 2, p. 744.

**STATUTORY NOTES****Amendments.**

The 2009 amendment, by ch. 295, in the first and last sentences, substituted "licensing of daycare services" for "licensing of day care services"; and, in the second sentence, deleted "fire" preceding "safety standards."

The 2011 amendment, by ch. 274, designated the existing provisions as subsection

(1), inserted "background" following "criminal history" in the second sentence in subsection (1); and added subsection (2).

**Effective Dates.**

Section 20 of S.L. 2009, ch. 295 provided that the act should take effect on and after January 1, 2010.

**39-1109. Safety standards.** — (1) Daycare facilities, owners and operators shall comply with the following safety standards in the area of the daycare facility in which daycare is provided:

- (a) Adequate fire and smoke alarms;
- (b) A functional telephone located on the daycare premises during the hours of operation;
- (c) Adequate fire extinguishers;
- (d) Adequate exits;
- (e) Firearms or other weapons which are stored on the premises of a daycare facility must be kept in a locked container that is inaccessible to children while daycare attendees are present;
- (f) Pools, hot tubs, ponds and other bodies of water that are on the daycare facility premises must provide the following safeguards:
  - (i) The area surrounding the body of water must be fenced and locked in a manner that prevents access by children and meets the following requirements:

1. The fence must be at least four (4) feet high with no vertical opening more than four (4) inches wide, be designed so that a young child cannot climb or squeeze under or through the fence, surround all sides of the pool and have a gate that is self-closing and that has a self-latching mechanism in proper working order out of the reach of young children;

2. If the house forms one (1) side of the barrier for the pool, all doors that provide unrestricted access to the pool must have alarms that produce an audible sound when the door is opened;

3. Furniture or other large objects must not be left near the fence in a manner that would enable a child to climb on the furniture or other large object and gain access to the pool; and

(ii) If the area surrounding a pool, hot tub, pond or other body of water is not fenced and locked, there must be a secured protective covering that will not allow access by a child;

(iii) Wading pools must be empty when not in use;

(iv) Children must be under direct supervision of at least one (1) adult employee while using a pool, hot tub, pond or other body of water; and

(v) A minimum of a four (4) foot high fence must be present that prevents access from the daycare facility premises if the daycare premises are adjacent to a body of water; and



(g) The owner or operator of a daycare facility shall ensure that at all times when a child or children are present, at least one (1) adult employee on the premises has current certification in pediatric rescue breathing and first-aid treatment from a certified instructor.

(2) No fire standards developed pursuant to this chapter shall be more stringent than the standards contained in the International Fire Code, as adopted by Idaho.

(3) At least one (1) adult employee must be present at all times when a child or children are in attendance.

(4)(a) The maximum allowable child:staff ratio shall be a maximum of twelve (12) points per staff member using the following point system:

(i) Each child in attendance under the age of twenty-four (24) months shall equal two (2) points.

(ii) Each child in attendance from twenty-four (24) months to under thirty-six (36) months of age shall equal one and one-half (1 1/2) points.

(iii) Each child in attendance from thirty-six (36) months to under five (5) years of age shall equal one (1) point.

(iv) Each child in attendance from five (5) years to under thirteen (13) years of age shall equal one-half (1/2) point.

(b) Each child in attendance shall be counted by the department for purposes of calculating maximum allowable points, counting the number of children in attendance and for determining compliance with child:staff ratios.

#### History.

I.C., § 39-1109, as added by 1987, ch. 56, § 1, p. 92; am. 1997, ch. 164, § 1, p. 473; am.

2002, ch. 86, § 3, p. 195; am. 2009, ch. 295, § 9, p. 873; am. 2011, ch. 274, § 3, p. 744.

### STATUTORY NOTES

#### Amendments.

The 2009 amendment, by ch. 295, rewrote the section to the extent that a detailed comparison is impracticable.

The 2011 amendment, by ch. 274, inserted "owners and operators" in the introductory paragraph in subsection (1); substituted "at least one (1) adult employee" for "an adult" in paragraph (1)(f)(iv); in paragraph (1)(g), inserted "when a child or" preceding "children" and inserted "employee"; substituted the current provisions in subsection (3) for "An adult

must be present at all times during business hours on the daycare facility premises"; and rewrote subsection (4).

#### Compiler's Notes.

See Idaho Administrative Code § 18.01.50 for adoption of 2006 international fire code.

#### Effective Dates.

Section 20 of S.L. 2009, ch. 295 provided that the act should take effect on and after January 1, 2010.

**39-1110. Health standards.** — Daycare facilities shall comply with the following health standards:

(1) Food for use in daycare facilities shall be prepared and served in a sanitary manner with sanitized utensils and on surfaces that have been cleaned, rinsed and sanitized prior to use to prevent contamination;

(2) All food that is to be served in daycare facilities shall be stored in such a manner that it is protected from potential contamination;

(3) Diaper changing shall be conducted in such a manner as to prevent the spread of communicable diseases;



- (4) Sleeping and play areas, restrooms and fixtures shall be maintained in a safe, sanitary condition;
- (5) Children and facility personnel shall be provided with individual or disposable towels for handwashing and the handwashing area shall be equipped with soap and hot and cold running water;
- (6) The water supply, where the source is other than a public water system, must be approved in accordance with the rules adopted by the department;
- (7) Medicines, cleaning supplies and other hazardous substances must be stored out of reach of children;
- (8) Smoking or alcohol consumption is prohibited on the premises of a daycare facility during the daycare facility's hours of operation; and
- (9) Representatives of health and safety inspectors shall not be denied access to a daycare facility during hours of operation for purposes of control of communicable disease or inspection.

**History.** § 1, p. 92; am. 1994, ch. 147, § 1, p. 335; am. I.C., § 39-1110, as added by 1987, ch. 56, 2009, ch. 295, § 10, p. 873.

STATUTORY NOTES

**Amendments.** The 2009 amendment, by ch. 295, throughout the section, substituted "daycare facilities" for "day care facilities" or similar language; in subsection (4), inserted "safe"; in subsection (6), inserted "in accordance with the rules adopted" and substituted "department" for "district board of health"; rewrote subsection (8), which formerly read: "A telephone or some type of emergency communication system is required"; and, in subsection (9), substituted "Representatives of health and safety inspectors" for "Representatives of the district health department," inserted "during hours of operation," and added "or inspection."

**Effective Dates.** Section 20 of S.L. 2009, ch. 295 provided that the act should take effect on and after January 1, 2010.

**39-1111. Rules authorized.** — In order to implement the provisions of this chapter, the department, in addition to other duties imposed by law, is hereby authorized and directed through rulemaking to establish procedures necessary to implement the provisions of this chapter including procedure for submission of required certificates as provided in sections 39-1109 and 39-1110, Idaho Code, and to conduct the criminal history check provided in section 39-1105, Idaho Code.

The rulemaking authority granted in this section shall be limited to the specific standards and procedures required by this chapter.

**History.** I.C., § 39-1111, as added by 1987, ch. 56, § 1, p. 92; am. 2009, ch. 295, § 11, p. 873.

STATUTORY NOTES

**Amendments.** The 2009 amendment, by ch. 295, rewrote the section to the extent that a detailed comparison is impracticable.

**Effective Dates.** Section 6 of S.L. 1987, ch. 56 read: "In order to achieve an orderly transition pursuant to this act, the provisions of this act authorizing

the promulgation of rules, fees and forms shall be in full force and effect on and after October 1, 1987, and the remaining portions of this act shall be in full force and effect on and after March 1, 1988.”

Section 20 of S.L. 2009, ch. 295 provided that the act should take effect on and after January 1, 2010.

**39-1112. Visitation.** — Any parent or guardian shall have the absolute right to enter the premises of any facility during the period of care for the parent’s or guardian’s child or children. Any failure or refusal to allow entry to a parent or guardian may be grounds for suspension or revocation of the license, pursuant to section 39-1113, Idaho Code. If a parent or guardian has been granted limited or has been denied visitation rights by a court of competent jurisdiction, this section shall not confer a right to visitation.

**History.**

I.C., § 39-1112, as added by 1987, ch. 56,  
§ 1, p. 92.

**39-1112A. Access to information.** — The department shall make available to daycare consumers an informational pamphlet, created by the department, to educate daycare consumers with informational tools useful in identifying quality daycare. The department may deliver pamphlets during direct contact with daycare consumers, or by delivering pamphlets to daycare providers during the licensing or renewal process, during inspections or through other appropriate means. The pamphlet shall include:

(1) The importance of parents being vigilant for the safety, emotional health and training of their children that cannot be replaced by any other institution or individual;

(2) The basic characteristics of a quality daycare;

(3) A strong suggestion to parents to inquire about criminal history checks for any provider in a family daycare home;

(4) A link to a department approved website that contains more detailed information; and

(5) A department or other phone number for parents to report unsafe, dangerous or harmful activities within the daycare.

**History.**

I.C., § 39-1112A, as added by 2009, ch. 295,  
§ 12, p. 873.

**STATUTORY NOTES**

**Effective Dates.**

Section 20 of S.L. 2009, ch. 295 provided

that the act should take effect on and after  
January 1, 2010.

**39-1113. Denial, suspension or revocation of license.** — (1) A license may be denied, suspended or revoked by the department if the department finds that the applicant or licensee does not comply with the provisions of this chapter.

(2) No person who pleads guilty to, has been found guilty of or received a withheld judgment for any offense involving neglect or any physical injury to, or other abuse of a child including the following offenses or a similar

provision in another jurisdiction, shall be eligible for a license under the provisions of this chapter:

- (a) Felony injury of a child, section 18-1501, Idaho Code.
- (b) The sexual abuse of a child under sixteen years of age, section 18-1506, Idaho Code.
- (c) The ritualized abuse of a child under eighteen years of age, section 18-1506A, Idaho Code.
- (d) The sexual exploitation of a child, section 18-1507 or 18-1507A, Idaho Code.
- (e) Sexual abuse of a child under the age of sixteen years, section 18-1506, Idaho Code.
- (f) Lewd conduct with a child under the age of sixteen years, section 18-1508, Idaho Code.
- (g) The sale or barter of a child for adoption or other purposes, section 18-1511, Idaho Code.
- (h) Murder in any degree, section 18-4001 or 18-4003, Idaho Code.
- (i) Assault with intent to murder, section 18-4015, Idaho Code.
- (j) Voluntary manslaughter, section 18-4006, Idaho Code.
- (k) Rape, section 18-6101 or 18-6108, Idaho Code.
- (l) Incest, section 18-6602, Idaho Code.
- (m) Forcible sexual penetration by use of foreign object, section 18-6608, Idaho Code.
- (n) Abuse, neglect or exploitation of a vulnerable adult, section 18-1505, Idaho Code.
- (o) Aggravated, first degree, second degree and third degree arson, sections 18-801 through 18-805, Idaho Code.
- (p) Crimes against nature, section 18-6605, Idaho Code.
- (q) Kidnapping, sections 18-4501 through 18-4503, Idaho Code.
- (r) Mayhem, section 18-5001, Idaho Code.
- (s) Poisoning, section 18-4014 or 18-5501, Idaho Code.
- (t) Possession of sexually exploitative material, section 18-1507A, Idaho Code.
- (u) Robbery, section 18-6501, Idaho Code.
- (v) Stalking in the first degree, section 18-7905, Idaho Code.
- (w) Video voyeurism, section 18-6609, Idaho Code.
- (x) Enticing of children, section 18-1509 or 18-1509A, Idaho Code.
- (y) Inducing individuals under eighteen years of age into prostitution, section 18-5609, Idaho Code.
- (z) Inducing person under eighteen years of age to patronize a prostitute, section 18-5611, Idaho Code.
- (aa) Any felony punishable by death or life imprisonment.
- (bb) Attempt, section 18-306, Idaho Code, conspiracy, section 18-1701, Idaho Code, or accessory after the fact, section 18-205, Idaho Code, to commit any of the crimes designated in this subsection.

(3) No person who has pleaded guilty to, been found guilty of or received a withheld judgment for any offense involving neglect or any physical injury to, or other abuse of a child, including the following offenses or a similar provision in another jurisdiction shall be eligible for a license for a period of five (5) years under the provisions of this chapter.



- (a) Aggravated assault, section 18-905, Idaho Code.
  - (b) Aggravated battery, section 18-907(1), Idaho Code.
  - (c) Burglary, section 18-1401, Idaho Code.
  - (d) Felony theft, sections 18-2403 and 18-2407(1), Idaho Code.
  - (e) Forgery of a financial transaction card, section 18-3123, Idaho Code.
  - (f) Fraudulent use of a financial transaction card or number, section 18-3124, Idaho Code.
  - (g) Forgery or counterfeiting, chapter 36, title 18, Idaho Code.
  - (h) Misappropriation of personal identifying information, section 18-3126, Idaho Code.
  - (i) Insurance fraud, section 41-293, Idaho Code.
  - (j) Damage to or destruction of insured property, section 41-294, Idaho Code.
  - (k) Public assistance fraud, section 56-227, Idaho Code.
  - (l) Provider fraud, section 56-227A, Idaho Code.
  - (m) Attempted strangulation, section 18-923, Idaho Code.
  - (n) Attempt, section 18-306, Idaho Code, conspiracy, section 18-1701, Idaho Code, or accessory after the fact, section 18-205, Idaho Code, to commit any of the crimes designated in this subsection.
  - (o) Misdemeanor injury to a child, section 18-1501(2), Idaho Code.
- (4) A daycare facility license may be denied, suspended or revoked by the department if the department finds that the daycare facility is not in compliance with the standards provided for in this chapter or criminal activity that threatens the health or safety of a child.
- (5) A daycare facility license or privilege to operate a family daycare home shall be denied or revoked if a registered sex offender resides on the premises where daycare services are provided.
- (6) The denial, suspension or revocation of a license under this chapter may be appealed to the district court of the county in which the affected daycare facility is located and the appeal shall be heard de novo in the district court.

**History.**

I.C., § 39-1113, as added by 1987, ch. 56,  
§ 1, p. 92; am. 1990, ch. 271, § 1, p. 765; am.

1992, ch. 90, § 3, p. 279; am. 2009, ch. 295,  
§ 13, p. 873.

**STATUTORY NOTES****Amendments.**

The 2009 amendment, by ch. 295, in the first sentence in subsection (2), inserted “pleads guilty to”; in subsection (2)(a), substituted “Felony injury of a child” for “Injuring a child”; added subsections (2)(e) and (2)(i), and made related redesignations; in subsection (2)(h), inserted “in any degree”; added subsec-

tions (2)(n) through (2)(bb) and subsections (3) through (5), redesignating former subsection (3) as subsection (6), and therein substituting “daycare facility” for “day care center.”

**Effective Dates.**

Section 20 of S.L. 2009, ch. 295 provided that the act should take effect on and after January 1, 2010.

**39-1114. Limited applications.** — (1) Any person providing daycare for four (4) or more children in a family daycare home shall not be required to be licensed, but shall comply with the requirements of section 39-1105, Idaho Code, for a criminal history check.

(2) Fire inspections may be conducted by department designated health and safety inspectors where necessary. The fire inspection certificate and the criminal history check shall be available for inspection on the premises.

(3) A family daycare home providing care for fewer than seven (7) children may elect to comply with the provisions of this chapter and upon a finding of compliance by the department, shall receive a basic daycare license.

**History.**

I.C., § 39-1114, as added by 1987, ch. 56,  
§ 1, p. 92; am. 2009, ch. 295, § 14, p. 873.

**STATUTORY NOTES**

**Amendments.**

The 2009 amendment, by ch. 295, rewrote the section to the extent that a detailed comparison is impracticable.

**Effective Dates.**

Section 20 of S.L. 2009, ch. 295 provided that the act should take effect on and after January 1, 2010.

**39-1115. Misdemeanor.** — (1) It shall be a misdemeanor to operate a daycare facility within this state without first obtaining a basic daycare license from the department or to operate a daycare facility without posting a basic daycare license in a conspicuous place. A copy of this chapter shall be available on the premises at all times for staff and parents to read on request.

(2) If a daycare facility is found to be operating without a license, the licensing agency may grant a grace period of no more than sixty (60) days to allow the daycare facility to come into compliance with the provisions of this chapter.

(3) It shall be a misdemeanor to operate a family daycare home caring for four (4) or more children without obtaining the criminal history check required in section 39-1105, Idaho Code; provided, that in the event of an initial citation for violation of the provisions of this subsection, if a person makes the applications required within twenty (20) days, the complaint shall be dismissed. Operation of a family daycare home caring for four (4) or more children after failure to pass a required criminal history check shall be a misdemeanor.

(4) It is a misdemeanor for any person to provide daycare services if such person has been found guilty in this state's courts, in any other state's courts, or in any federal court, of any offense listed under the provisions of section 39-1113, Idaho Code.

**History.**

I.C., § 39-1115, as added by 1987, ch. 56, § 1, p. 92; am. 1992, ch. 90, § 4, p. 279; am. 2009, ch. 295, § 15, p. 873.

**STATUTORY NOTES**

**Cross References.**

Penalty for misdemeanor when not otherwise provided, § 18-113.

**Amendments.**

The 2009 amendment, by ch. 295, rewrote the section to the extent that a detailed com-

parison is impracticable.

**Effective Dates.**

Section 20 of S.L. 2009, ch. 295 provided

that the act should take effect on and after January 1, 2010.

**39-1116. Prosecution.** — It shall be the duty of the prosecuting attorney of the county in which the daycare facility is located to prosecute violations of the provisions of this chapter.

**History.**

I.C., § 39-1116, as added by 1987, ch. 56, § 1, p. 92; am. 2009, ch. 295, § 16, p. 873.

**STATUTORY NOTES**

**Amendments.**

The 2009 amendment, by ch. 295, substituted “daycare facility” for “day care center or group day care center.”

**Effective Dates.**

Section 20 of S.L. 2009, ch. 295 provided that the act should take effect on and after January 1, 2010.

**39-1117. No liability to state or political subdivisions.** — The issuance of a license or certificate pursuant to this chapter shall not constitute a representation of affirmance to any person that the daycare facility to which a license is issued is free from risk with regard to the standards in this chapter. The state, its political subdivisions or any employees or agents of the state or its political subdivisions shall not be liable for nor shall a cause of action exist for any loss or damage based upon the failure of any person to meet the standards contained in this chapter.

**History.**

I.C., § 39-1117, as added by 1987, ch. 56, § 1, p. 92; am. 2009, ch. 295, § 17, p. 873.

**STATUTORY NOTES**

**Cross References.**

Board of health and welfare, § 56-1005.

**Amendments.**

The 2009 amendment, by ch. 295, in the first sentence, substituted “daycare facility” for “day care center” and deleted “or a group day care facility to which a certificate is issued” following “is issued.”

**Effective Dates.**

Section 6 of S.L. 1987, ch. 56 read: “In order

to achieve an orderly transition pursuant to this act, the provisions of this act authorizing the promulgation of rules, fees and forms shall be in full force and effect on and after October 1, 1987, and the remaining portions of this act shall be in full force and effect on and after March 1, 1988.”

Section 20 of S.L. 2009, ch. 295 provided that the act should take effect on and after January 1, 2010.

**39-1118. Immunization required.** — (1) Within fourteen (14) days of a child’s initial attendance at any licensed daycare facility, the parent or guardian shall provide an immunization record to the operator of the daycare facility regarding the child’s immunity to certain childhood diseases. This record, signed by a physician or his representative or another licensed health care professional, shall verify that the child has received or is in the process of receiving immunizations as specified by the board; or can effectively demonstrate, through verification in a form approved by the department, immunity gained through prior contraction of the disease.



Immunizations required and the manner and frequency of their administration shall be as prescribed by the board and shall conform to recognized standard medical practices in the state. The board shall promulgate appropriate rules for the enforcement of the required immunization program and specify reporting requirements of daycare facilities, pursuant to the provisions of chapter 52, title 67, Idaho Code.

(2) Any minor child whose parent or guardian has submitted to officials of a licensed daycare facility a certificate signed by a physician licensed by the state board of medicine stating that the physical condition of the child is such that all or any of the required immunizations would endanger the life or health of the child shall be exempt from the provisions of this section. Any minor child whose parent or guardian has submitted a signed statement to officials of the daycare facility stating their objections on religious or other grounds shall be exempt from the provisions of this section.

**History.**

I.C., § 39-1118, as added by 1990, ch. 150,

§ 1, p. 333; am. 2009, ch. 295, § 18, p. 873; am. 2011, ch. 103, § 1, p. 266.

**STATUTORY NOTES**

**Amendments.**

The 2009 amendment, by ch. 295, in the first paragraph in subsection (1) and in subsection (2), substituted “daycare” for “day care”; in the first paragraph in subsection (1), substituted “representative of a district health department” for “representative of a health district,” and deleted “of health and welfare” following “board” and the last occurrence of “department”; in the last paragraph in subsection (1), twice deleted “state” and “of health and welfare” preceding and following “board,” respectively, deleted “and regulations” following “rules,” and substituted “daycare facilities” for “day care centers.”

The 2011 amendment, by ch. 103, in sub-

section (1), substituted “an immunization record” for “a statement” in the first sentence and substituted “This record, signed by a physician or his representative or another licensed health care professional, shall verify” for “This statement shall provide a certificate signed by a physician or a representative of a district health department” in the second sentence.

**Effective Dates.**

Section 20 of S.L. 2009, ch. 295 provided that the act should take effect on and after January 1, 2010.

**39-1119. Training requirements.** — The owner or operator of a day care center shall ensure that each employee receives four (4) hours of ongoing training every twelve (12) months after the employee’s hire date.

**History.**

I.C., § 39-1119, as added by 1993, ch. 416, § 2, p. 1528.

**39-1120. Nondelegable duties and responsibilities.** — The department’s duties and responsibilities under this chapter are nondelegable.

**History.**

I.C., § 39-1120, as added by 2009, ch. 295, § 19, p. 873.

**STATUTORY NOTES**

**Effective Dates.**

Section 20 of S.L. 2009, ch. 295 provided

that the act should take effect on and after January 1, 2010.

## CHAPTER 12

### CHILD CARE LICENSING REFORM ACT

**SECTION.**

- 39-1201. Policy.
- 39-1202. Definitions.
- 39-1203. Filing of disclosure reports.
- 39-1204. Form for disclosure report.
- 39-1205. Evaluation of disclosure reports.
- 39-1206. Children's camps.
- 39-1207. Residential schools.
- 39-1208. Standards for children's therapeutic outdoor programs.
- 39-1209. Standards for children's agencies.
- 39-1210. Standards for children's residential care facilities.
- 39-1211. Standards for foster homes — Board authorized to implement and enforce.
- 39-1211A. Relative foster care — Limited variance or waiver.
- 39-1212. Application of administrative procedures act.

**SECTION.**

- 39-1213. Licensing authority.
- 39-1214. Eligibility for license.
- 39-1215. Expiration — Renewal.
- 39-1216. Provisional license.
- 39-1217. Visitation.
- 39-1218. License — Denial — Suspension — Revocation — Nonrenewal — Hearing.
- 39-1219. Appeal from decision of director.
- 39-1220. Operating without license misdemeanor.
- 39-1221. Removal of children.
- 39-1222. Action against unlicensed foster home, children's agency, children's therapeutic outdoor program or children's residential care facility.
- 39-1223. Construction of act.
- 39-1224. Title of act.

**39-1201. Policy.** — It is hereby declared to be the policy of this state to insure that children of this state shall receive adequate substitute parental care in the event of absence, temporary or permanent inability of parents to provide care and protection for their children or the parents are seeking alternative twenty-four (24) hour long-term care for their children. This policy is predicated upon the fact that children are vulnerable, not capable of protecting themselves, and when their parents for any reason have relinquished their care to others, there arises the possibility of certain risks to the children's lives, health and safety which the community as a whole must protect against. This requires the offsetting statutory protection of review and, in certain instances, licensing or registration.

The provisions of this chapter shall apply only to those entities specifically addressed herein. It is not the intent of the legislature to restrict, regulate, or otherwise control private day schools or home schools.

**History.**

1963, ch. 320, § 1, p. 901; am. and redesign.  
1990, ch. 215, § 2, p. 567.

**STATUTORY NOTES****Cross References.**

Idaho health planning act, § 39-4901 et seq.

**Prior Laws.**

Former §§ 39-1201 to 39-1207, which comprised S.L. 1945, ch. 58, §§ 1 to 6, p. 73; 1947, ch. 141, §§ 1 to 3, p. 339, were repealed by S.L. 1963, ch. 320, § 20.

**Legislative Intent.**

Section 1 of S.L. 1990, ch. 215 read: "It is the intent of the legislature of the state of

Idaho that the existing law governing child care facilities in chapter 12, title 39, Idaho Code, should be amended to clarify the different types of facilities in Idaho which provide twenty-four (24) hour child care for children in lieu of parental care. Since the enactment of the original language in this chapter in 1965 [1963], many different types of child care facilities have opened in Idaho providing a wide range of services for children but creating uncertainties whether they are or are not covered by the provisions of this chapter. Also,

the Idaho legislature has enacted a separate law governing day care facilities for children. Therefore, it is timely to clarify how to categorize different child care providers, to identify which care providers are covered by this chapter and to assure that the provisions of this chapter do not and cannot be interpreted

to apply to day care facilities, day schools, or to any type of home schools."

**Compiler's Notes.**

This section was formerly compiled as § 39-1208.

**OPINIONS OF ATTORNEY GENERAL**

A boarding school which provides 24-hour group care for children under the age of 18

years is subject to the provisions of this chapter. OAG 87-4.

**39-1202. Definitions. —** For the purposes of this chapter:

- (1) "Board" means the Idaho board of health and welfare.
- (2) "Child care" means that care, control, supervision or maintenance of children for twenty-four (24) hours a day which is provided as an alternative to parental care.
- (3) "Child" means an individual less than eighteen (18) years of age who is not enrolled in an institution of higher education.
- (4) "Children's agency" means a person who operates a business for the placement of children in foster homes or for adoption in a permanent home and who does not provide child care as part of that business. Children's agency does not include a licensed attorney or physician assisting or providing natural and adoptive parents with legal services or medical services necessary to initiate and complete adoptive placements.
- (5) "Children's camp" means a program of child care at a location away from the child's home which is primarily recreational and includes the overnight accommodation of the child and is not intended to provide treatment, therapy or rehabilitation for the child.
- (6) "Children's institution" means a person who operates a residential facility for children not related to that person if that person is an individual, for the purpose of providing child care. Children's institutions include, but are not limited to, foster homes, maternity homes, children's therapeutic outdoor programs, or any facilities providing treatment, therapy or rehabilitation for children. Children's institutions do not include: (a) facilities which provide only daycare as defined in chapter 11, title 39, Idaho Code; (b) facilities and agencies including hospitals, skilled nursing facilities, intermediate care facilities, and intermediate care facilities for people with intellectual disabilities licensed pursuant to chapter 13, title 39, Idaho Code; (c) day schools; (d) individuals acting in an advisory capacity, counseling a child in a religious context, and providing no child care associated with the advice; (e) the occasional or irregular care of a neighbor's, relative's or friend's child or children by a person not ordinarily engaged in child care.
- (7) "Children's residential care facility" means a children's institution, excluding:
  - (a) Foster homes;
  - (b) Residential schools;
  - (c) Children's camps.

No facility expressly excluded from the definition of a children's institution is included within the definition of a children's residential care facility.



(8) "Children's therapeutic outdoor program" is a program which is designed to provide behavioral, substance abuse, or mental health services to minors in an outdoor setting. This does not include children's camps, church camps, or other outdoor programs primarily designed to be educational or recreational, such as Boy Scouts, Girl Scouts, 4-H or sports camps.

(9) "Continued care" means the ongoing placement of an individual in a foster home, children's residential care facility, or transitional living placement who reaches the age of eighteen (18) years but is less than twenty-one (21) years of age.

(10) "Day school" means a public, private, parochial or secular facility offering an educational program in which the children leave the facility each day at the conclusion of the academic, vocational or school supervised activities.

(11) "Department" means the state department of health and welfare.

(12) "Director" means the director of the department of health and welfare.

(13) "Foster care" means child care by a person not related to the child, in lieu of parental care, in a foster home.

(14) "Foster home" means a home which accepts, for any period of time, with or without compensation, one (1) or more children who are not related to the foster parent as members of the household for the purpose of providing substitute parental care.

(15) "Group care" means foster care of a number of children for whom child care in a family setting is not available or appropriate, in a dormitory or cottage type setting, characterized by activities and discipline of a more regimented and less formal nature than found in a family setting.

(16) "Juvenile detention" is as defined in section 20-502(6), Idaho Code, of the juvenile corrections act.

(17) "Juvenile detention center" means a facility established pursuant to sections 20-517 and 20-518, Idaho Code.

(18) "Person" includes any individual, group of individuals, association, partnership, limited liability company or corporation.

(19) "Placement" means finding a suitable licensed foster home or suitable adoptive home for a child and completing the arrangements for a child to be accepted into and adjusted to such home.

(20) "Relative" means a child's grandparent, great grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, first cousin, sibling and half-sibling.

(21) "Representative" means an employee of the state department of health and welfare.

(22) "Residential facility" means any facility where child care is provided, as defined in this section, and which provides day and night accommodation.

(23) "Residential school" means a residential facility for children which:

(a) Provides a planned, scheduled, regular, academic or vocational school program for students in the elementary, middle or secondary grades as defined in section 33-1001, Idaho Code; and

(b) Provides services substantially comparable to those provided in nonresidential public schools where the primary purpose is the education and academic pursuits of the students; and

- (c) Does not seek, receive or enroll students for treatment of such special needs as substance abuse, mental illness, emotional disturbance, developmental disability or intellectual disability; and
- (d) Is not:
  - (i) A college or university; or
  - (ii) A children’s camp as defined in this section; or
  - (iii) A public or private day school in which the children leave the facility each day at the conclusion of the academic, vocational and school supervised activities.
- (24) “Transitional living” means living arrangements and aftercare services for children, or as continued care, to gain experience living on their own in a supportive and supervised environment prior to emancipation.

**History.**

1963, ch. 320, § 2, p. 901; am. 1972, ch. 196, § 4, p. 483; am. 1974, ch. 23, § 113, p. 633; am. 1987, ch. 56, § 2, p. 92; am. 1990, ch. 214,	§ 1, p. 564; am. and redesign. 1990, ch. 215, § 3, p. 567; am. 2001, ch. 93, § 5, p. 232; am. 2002, ch. 219, § 1, p. 598; am. 2010, ch. 147, § 4, p. 314; am. 2010, ch. 235, § 22, p. 542.
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**STATUTORY NOTES**

**Prior Laws.**

Former § 39-1202 was repealed. See Prior Laws, § 39-1201.

**Amendments.**

This section was amended by two 2010 acts which appear to be compatible and have been compiled together.

The 2010 amendment, by ch. 147, added subsection (20) and redesignated the subsequent subsections accordingly.

The 2010 amendment, by ch. 235, in the last sentence in subsection (6), substituted “people with intellectual disabilities” for “the mentally retarded”; and in paragraph (23)(c), substituted “intellectual disability” for “mental retardation.”

**Compiler’s Notes.**

This section was formerly compiled as § 39-1209.

**OPINIONS OF ATTORNEY GENERAL**

A boarding school which provides 24-hour group care for children under the age of 18	years is subject to the provisions of this chapter. OAG 87-4.
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**39-1203. Filing of disclosure reports.** — All children’s institutions except foster homes shall file with the department a disclosure report as designed by the department and containing only such information as set forth in section 39-1204, Idaho Code. All such disclosure reports shall be signed under oath by the administrative employee responsible for operation of the children’s institution.

- (1) An initial disclosure report shall be filed with the department:
  - (a) Within six (6) months of the effective date of this chapter for all children’s institutions which are providing child care on the effective date of this chapter; or
  - (b) At least thirty (30) days prior to the acceptance of any child for child care.
- (2) An annual update disclosure report shall be filed by all children’s institutions except foster homes each year within thirty (30) days of the anniversary of the filing of the initial disclosure report. The department may waive the filing of an annual disclosure report by any children’s institution.

**History.**

I.C., § 39-1203, as added by 1990, ch. 215, § 4, p. 567; am. 1990, ch. 214, § 2, p. 564.

**STATUTORY NOTES****Prior Laws.**

Former § 39-1203 was repealed. See Prior Laws, § 39-1201.

ter" in subdivision (1)(a) refers to the effective date of S.L. 1990, ch. 215, which was effective July 1, 1990.

**Compiler's Notes.**

The phrase "the effective date of this chap-

**39-1204. Form for disclosure report.** — (1) The department shall design a form for the initial disclosure report which shall contain only the following information:

- (a) The name, address and telephone number(s) for each children's agency or children's institution.
- (b) The name(s), address and telephone number(s) of the individual(s) in charge at each children's agency or children's institution.
- (c) The number of children that can be accommodated for child care at each children's institution and a description of such accommodations.
- (d) Whether and how the children's institution seeks, receives or enrolls students for treatment of special needs such as substance abuse, mental illness, emotional disturbance, developmental disability, intellectual disability, or students who have been identified by the judicial system as requiring treatment, therapy, rehabilitation or supervision.
- (e) A complete description of the child care services to be provided at each children's institution.
- (f) Whether and how the children's institution expects to receive payment, including payment from health insurance carriers, for identified treatment needs such as substance abuse, mental illness, emotional disturbance, developmental disability, or intellectual disability.
- (g) Whether and how the children's institution represents to the payor of the child care services provided by the children's institution that such payment may qualify for health insurance reimbursement by the payor's carrier or may qualify for tax benefits relating to medical services.
- (h) A description of the educational programs provided at each children's institution and their accreditation status.

(2) The department shall design a form for the annual update disclosure report which shall reference the information provided in the initial disclosure report and shall request identification of any changes in the information provided on the initial report or the previous annual update disclosure report.

**History.**

I.C., § 39-1204, as added by 1990, ch. 215,

§ 5, p. 567; am. 2002, ch. 219, § 2, p. 598; am. 2010, ch. 235, § 23, p. 542.



STATUTORY NOTES

**Prior Laws.**

Former § 39-1204 was repealed. See Prior Laws, § 39-1201.

graphs (1)(d) and (1)(f), substituted “intellectual disability” for “mental retardation.”

**Compiler’s Notes.**

The letter “s” enclosed in parentheses so appeared in the law as enacted.

**Amendments.**

The 2010 amendment, by ch. 235, in para-

**39-1205. Evaluation of disclosure reports.** — The department shall review all initial and annual update disclosure reports and shall categorize each children’s institution, based on the type of care provided, into one (1) of the following categories:

- (1) Foster homes;
- (2) Residential schools;
- (3) Children’s camps;
- (4) Children’s therapeutic outdoor program; or
- (5) Each children’s institution not otherwise categorized in subsections (1) through (4) of this section, except any day school, shall be designated as a “children’s residential care facility.”

**History.**

I.C., § 39-1205, as added by 1990, ch. 215,

§ 6, p. 567; am. 2001, ch. 93, § 6, p. 232; am. 2002, ch. 219, § 3, p. 598.

STATUTORY NOTES

**Prior Laws.**

Former § 39-1205 was repealed. See Prior Laws, § 39-1201.

**39-1206. Children’s camps.** — A children’s camp which provides child care for any one (1) child for more than nine (9) consecutive weeks in any one (1) year period shall constitute a children’s treatment facility. A children’s camp which also constitutes a residential school shall be governed under the provisions of this chapter as a residential school. A children’s camp which provides child care for any one (1) child for less than nine (9) consecutive weeks in any one (1) year period shall be exempt from the licensure and disclosure provisions of this chapter.

**History.**

I.C., § 39-1206, as added by 1990, ch. 215, § 7, p. 567; am. 1990, ch. 214, § 3, p. 564.

STATUTORY NOTES

**Prior Laws.**

Former § 39-1206 was repealed. See Prior Laws, § 39-1201.

**39-1207. Residential schools.** — (1) Upon receipt of an initial disclosure report from a children’s institution that the department categorizes as a residential school, the department shall provide a copy of such initial disclosure report to the Idaho department of education.

- (2) The Idaho department of education shall certify to the department

whether each residential school has been accredited according to the accrediting standards promulgated by the Idaho department of education, the Idaho state board of education or a secular or religious accrediting association recognized by the Idaho department of education.

(3) If a residential school has been certified as accredited under subsection (2) of this section, then the department shall exercise no further jurisdiction under this chapter over that accredited residential school so long as the accreditation for the residential school remains in effect.

(4) Upon certification of accreditation, the Idaho department of education shall notify the accredited residential school that all future update disclosure reports or other reports as the Idaho department of education may require shall be filed with the Idaho department of education so long as the accreditation remains in effect.

(5) Upon the determination by the Idaho department of education that a residential school is no longer accredited, it shall notify the department and shall notify the residential school that all future update disclosure reports must be filed with the department.

(6) A residential school that is not certified or accredited pursuant to this section or has lost accreditation shall be subject to the jurisdiction of the department as a children's treatment facility pursuant to section 39-1210, Idaho Code, unless and until accreditation is certified by the Idaho department of education pursuant to this section.

(7) The department has the authority to postpone for up to one (1) year the designation of a nonaccredited residential school as a children's treatment facility upon receipt of an affidavit under oath signed by a legally authorized agent of the nonaccredited residential school that application for accreditation has been made to the Idaho department of education, the Idaho state board of education or an affiliated accrediting association recognized by the Idaho department of education; and the department determines that the application is being pursued in good faith.

#### **History.**

I.C., § 39-1207, as added by 1990, ch. 215,  
§ 8, p. 567.

### **STATUTORY NOTES**

#### **Cross References.**

State board of education, § 33-101.  
State department of education, § 33-125.

#### **Prior Laws.**

Former § 39-1207 was repealed. See Prior  
Laws, § 39-1201.

### **39-1208. Standards for children's therapeutic outdoor programs.**

— The board shall have the power and it shall be its duty to promulgate appropriate rules necessary to implement and enforce the following standards for licensing a children's therapeutic outdoor program:

(1) Assure the organizational stability of the program, which may require incorporation under the laws of Idaho.

(2) Require from the policymaking authority of the program the promulgation of a statement setting forth the program's purposes and objectives

and describing the character and extent of the services which it offers and maintains, and the geographical area to be served.

(3) Require a statement of solvency sufficient to maintain programs and personnel necessary to achieve its purposes and objectives and to maintain its services.

(4) Assure such recordkeeping and reporting as may be deemed necessary to the program's services and to the department's licensing responsibility.

(5) Assure the safety and physical care of children for whom the program assumes or accepts responsibility.

(6) Establish the legal status of each child accepted for care and the legal authority and responsibility of the program for the child.

(7) Require a statement of intake policy which shall set forth criteria for accepting children for care or service in relation to the program's purposes and physical demands.

(8) The department shall obtain a criminal history check on the owners, operators and employees of all children's therapeutic outdoor programs. The criminal history check shall be fingerprint based and include the following:

- (a) Statewide criminal identification bureau;
- (b) Federal bureau of investigation (FBI) criminal history;
- (c) National crime information center; and
- (d) Statewide child abuse register.

#### **History.**

I.C., § 39-1208, as added by 2002, ch. 219,  
§ 4, p. 598.

### **STATUTORY NOTES**

#### **Cross References.**

Bureau of criminal identification, § 67-3003.

#### **Prior Laws.**

Former § 39-1208, which comprised I.C., § 39-1208, as added by 1990, ch. 215, § 9, p. 567, was repealed by S.L. 2001, ch. 93, § 7.

#### **Compiler's Notes.**

For national crime information center, see <http://www.fas.org/irp/agency/doj/fbi/is/ncic.htm>.

The letters "FBI" enclosed in parentheses so appeared in the law as enacted.

**39-1209. Standards for children's agencies.** — The board shall have the power and it shall be its duty to promulgate appropriate rules and regulations necessary to implement and enforce the following standards for licensing children's agencies to:

(1) Assure the organizational stability of children's agencies, which may require incorporation under the laws of this state;

(2) Require from the policy-making authority of the agency a statement setting forth the agency's purposes and objectives and describing the character and extent of the services which it offers and maintains, and the geographical area to be served;

(3) Require a statement of financial solvency sufficient to maintain facilities and personnel necessary to achieve its purposes and objectives and to maintain its services.



**History.**

I.C., § 39-1209, as added by 1990, ch. 215,  
§ 10, p. 567.

**STATUTORY NOTES****Compiler's Notes.**

Former § 39-1209 was amended and redes-

igned as § 39-1202 by § 10 of S.L. 1990, ch. 215.

**39-1210. Standards for children's residential care facilities. —**

The board of health and welfare shall have the power and it shall be its duty to promulgate appropriate rules necessary to implement and enforce the following standards for licensing a children's residential care facility:

(1) Assure the organizational stability of the facility, which may require incorporation under the laws of Idaho.

(2) Require from the policy-making authority of the facility the promulgation of a statement setting forth the facility's purposes and objectives and describing the character and extent of the services which it offers and maintains, and the geographical area to be served.

(3) Require a statement of solvency sufficient to maintain facilities and personnel necessary to achieve its purposes and objectives and to maintain its services.

(4) Assure such recordkeeping and reporting as may be deemed necessary to the facility's services and to the department's licensing responsibility.

(5) Assure the safety and physical care of children for whom the facility assumes or accepts responsibility.

(6) Establish the legal status of each child accepted for care and the legal authority and responsibility of the facility for the child.

(7) Require a statement of intake policy which shall set forth criteria for accepting children for care or service in relation to the facility's purposes and facilities.

(8) Provide through observation and collateral inquiry for studies of homes into which children may be placed sufficient to enable a judgment determining the adequacy of the homes in relation to the needs of the children.

(9) In the case of an institution specializing in maternity care to unmarried mothers:

- (a) Assure social services on behalf of both the mother and infant; and
- (b) Assure protection of the legal rights and rights to confidential treatment of minor unmarried mothers and their children which shall be subject to disclosure according to chapter 3, title 9, Idaho Code.

(10) The department shall obtain a criminal history check on the owners, operators and employees of all children's residential care facilities. The criminal history check shall include the following:

- (a) Statewide criminal identification bureau;
- (b) Federal bureau of investigation (FBI) criminal history;
- (c) National crime information center; and
- (d) Statewide child abuse register.

**History.**

1963, ch. 320, § 3, p. 901; am. 1980, ch. 325, § 3, p. 820; am. 1990, ch. 213, § 40, p. 480;

am. 1990, ch. 215, § 11, p. 567; am. 2001, ch. 93, § 8, p. 232.

**STATUTORY NOTES****Cross References.**

Board of health and welfare, § 56-1005.  
Bureau of criminal identification, § 67-3003.

**Amendments.**

This section was amended by two 1990 acts, ch. 213, § 40, effective July 1, 1993 and ch. 215, § 11, effective July 1, 1990, which, except for one instance in subdivision (8), do not conflict and have been compiled together.

The amendment 1990, by ch. 213, § 40, enclosed the subdivision designations (1) — (9) in parentheses; at the end of subdivision (8) substituted a semicolon for a comma and in subdivision (9) in paragraph (b) added “which shall be subject to disclosure according to chapter 3, title 9, Idaho Code” following “their children”.

The 1990 amendment, by ch. 215, § 11, in the section heading substituted “treatment facilities” for “agencies and children’s institutions—Board to implement and enforce”; in the introduction substituted “a” for “children’s agencies and” following “for licensing”, and substituted “treatment facility” for “institution” at the end of the paragraph; in subdivisions (1), (2), (4) — (7) substituted “facility”

for “agency’s” each time it appears; in subdivision (3) substituted “a statement of solvency” for “evidence of income and resources” following “Require”; at the end of subdivision (6) substituted “the child” for “him”; in subdivision (8) at the end substituted a period for “and”; in subdivision (9) in paragraph (a) substituted a semicolon for a comma following “infant”; and added subdivision (10).

**Compiler’s Notes.**

For national crime information center, see <http://www.fas.org/irp/agency/doj/fbi/is/ncic.htm>.

The letters “FBI” enclosed in parentheses so appeared in the law as enacted.

**Effective Dates.**

Section 11 of S.L. 1980, ch. 325 declared an emergency. Approved April 2, 1980.

Section 111 of S.L. 1990, ch. 213 as amended by § 16 of S.L. 1991, ch. 329 provided that §§ 3 through 45 and 48 through 110 of the act should take effect July 1, 1993 and that §§ 1, 2, 46 and 47 should take effect July 1, 1990.

**39-1211. Standards for foster homes — Board authorized to implement and enforce.** — The board of health and welfare shall have the power, and it shall be its duty to promulgate appropriate rules necessary to implement and enforce the following standards for licensing private foster homes pursuant to this chapter. Such rules shall:

- (1) Require evidence of income and resources sufficient to maintain the home and the services offered.
- (2) Require such recordkeeping and reporting regarding children’s status and progress as may be deemed necessary.
- (3) Assure the safety and adequate physical care of children under care.
- (4) Require that foster parents be physically and emotionally suited to care for unrelated children and to deal with problems presented by children away from their own homes and own parents and shall require a criminal background check.

Provided, however, nothing in this chapter shall be construed to cover the occasional or irregular care of a neighbor’s, relative’s or friend’s child or children by a person not ordinarily engaged in child care.

**History.**

1963, ch. 320, § 4, p. 901; am. 1972, ch. 196, § 5, p. 483; am. 1974, ch. 23, § 114, p. 633;

am. 1987, ch. 56, § 3, p. 92; am. 1990, ch. 215, § 12, p. 567; am. 2001, ch. 93, § 9, p. 232.

## STATUTORY NOTES

**Cross References.**

Board of health and welfare, § 56-1005.

this act take effect from and after July 1, 1972.

**Effective Dates.**

Section 21 of S.L. 1972, ch. 196 provided

**39-1211A. Relative foster care — Limited variance or waiver. —**

(1) A relative providing foster care for a related child pursuant to chapter 16, title 16, Idaho Code, must be licensed in accordance with this chapter.

(2) Notwithstanding the provisions of subsection (1) of this section, the department may expedite placement with a relative, issue a foster care license or grant a limited variance or waiver of a licensing standard or requirement if, in the department's judgment, the health and safety of the related child is not thereby endangered.

(3) If the department grants a limited variance or waiver of a licensing standard or requirement to the child's relative pursuant to this section, the department shall document the grounds for granting the limited variance or waiver and the reasons the limited variance or waiver will not compromise the related child's safety and health.

(4) A limited variance or waiver of a licensing standard or requirement granted to a child's relative pursuant to this section shall be reviewed by the department for continuing compliance, need, and approval at regular intervals, subject to the provisions of section 39-1113, Idaho Code.

(5) The board shall promulgate appropriate rules necessary to implement and enforce the provisions of this section.

**History.**

I.C., § 39-1211A, as added by 2010, ch. 147,  
§ 5, p. 314.

**39-1212. Application of administrative procedures act. —** Actions of the department relating to adoption of rules and regulations, notice, hearings, appeals from decisions of the department or the director, and review shall be governed by the provisions of chapter 52, title 67, Idaho Code, the administrative procedures act.

**History.**

I.C., § 39-1212, as added by 1990, ch. 215,  
§ 14, p. 567.

## STATUTORY NOTES

**Prior Laws.**

Former § 39-1212, which comprised 1963,  
ch. 320, § 5, p. 901; am. 1974, ch. 23, § 115, p.

633; am. 1981, ch. 117, § 1, p. 200, was  
repealed by S.L. 1990, ch. 215, § 13.

**39-1213. Licensing authority. —** (a) The board of health and welfare is hereby authorized and directed to establish procedures for licensing foster homes, children's agencies, children's therapeutic outdoor programs and children's residential care facilities which are maintained and operated in conformity with the rules and standards authorized herein. Such proce-



dures shall include the manner and form for making application for license, investigation upon application and notice of decision.

(b) It is recognized that children’s agencies may have their own procedure for approval of foster homes affiliated with their program. Any foster home which has been approved by a licensed children’s agency shall be exempt from the licensing provisions of this chapter, provided that the standards for approval by such agency are no less restrictive than rules and standards established by the board of health and welfare, and provided further that such children’s agency is maintained and operated in conformity with rules and standards of the board of health and welfare. The board of health and welfare may promulgate rules necessary to implement the provisions of this section.

(c) The board of health and welfare is hereby authorized to establish rules allowing for continued care for appropriate individuals eighteen (18) to twenty-one (21) years of age who have been receiving services by, through, or with the authorization of the department of health and welfare or the department of juvenile corrections prior to their eighteenth birthday.

History.

1963, ch. 320, § 6, p. 901; am. 1974, ch. 23, § 116, p. 633; am. 1980, ch. 302, § 1, p. 780;

am. 1990, ch. 215, § 15, p. 567; am. 2001, ch. 93, § 10, p. 232; am. 2002, ch. 219, § 5, p. 598.

STATUTORY NOTES

Cross References.

Board of health and welfare, § 56-1005.

Department of juvenile corrections, § 20-503.

JUDICIAL DECISIONS

Day Care Business.

A county may not, as a part of its zoning scheme, require an applicant for a conditional use permit to obtain a license for the conduct

of a day care business when no statute mandates such licensing. County of Ada v. Hill, 110 Idaho 289, 715 P.2d 959 (1986).

**39-1214. Eligibility for license.** — Any foster home, children’s agency, children’s therapeutic outdoor program or children’s residential care facility which applies for a license in the manner and form prescribed by the board of health and welfare and is found upon investigation by the department to be established in conformity with the rules and standards established by the department under the authority conferred herein shall be licensed for a period of one (1) year.

History.

1963, ch. 320, § 7, p. 901; am. 1990, ch. 215,

§ 16, p. 567; am. 2001, ch. 93, § 11, p. 232; am. 2002, ch. 219, § 6, p. 598.

STATUTORY NOTES

Cross References.

Board of health and welfare, § 56-1005.

**39-1215. Expiration — Renewal.** — If a licensee desires to apply for a renewal of its license, an application for renewal shall be filed sixty (60) days

prior to the expiration date of the license in force. When such application for renewal has been made in the proper manner and form, the existing license shall, unless officially revoked, remain in force until the department has acted on the application for renewal.

**History.**

1963, ch. 320, § 8, p. 901.

**39-1216. Provisional license.** — Upon initial investigation, should an applicant for a license be unable to meet a standard because of conditions that are unlikely to endure beyond six (6) months from the date of such investigation, the department may, if in its judgment the health and safety of any child is not thereby endangered, issue a provisional license for a period not to exceed six (6) months. No more than one (1) provisional license shall be issued to the same foster home, children's agency, children's therapeutic outdoor program or children's residential care facility in any twelve (12) month period.

**History.**

1963, ch. 320, § 9, p. 901; am. 1990, ch. 215, § 17, p. 567; am. 2001, ch. 93, § 12, p. 232; am. 2002, ch. 219, § 7, p. 598.

**39-1217. Visitation.** — For the purpose of determining whether every licensed foster home, licensed children's agency, licensed children's therapeutic outdoor program and licensed children's residential care facility consistently maintains conformity with the standards established under the authority conferred herein, the department, through an authorized representative, shall visit each such home and facility as often as it deems necessary or desirable, but in any event at intervals not to exceed twelve (12) months.

**History.**

1963, ch. 320, § 10, p. 901; am. 1990, ch. 215, § 18, p. 567; am. 2001, ch. 93, § 13, p. 232; am. 2002, ch. 219, § 8, p. 598.

**39-1218. License — Denial — Suspension — Revocation — Nonrenewal — Hearing.** — (1) Any license issued pursuant to this chapter may be denied, suspended, revoked or not renewed, by notice in writing by the director or his authorized representative served upon the applicant or licensee by registered or certified mail, setting forth the reasons therefor, if upon investigation it is found that the licensee has failed or refused to comply with any of the provisions of this chapter or with any of the rules, regulations or standards established pursuant to this chapter.

(2) Within fifteen (15) days from receipt of notice of grounds for denial, suspension, revocation or nonrenewal, the applicant or licensee may serve upon the director by registered or certified mail, a written request for hearing. Upon receipt of such request, the director shall fix a date for hearing, which date shall not be more than thirty (30) days from receipt of the request and shall give the applicant or licensee at least fifteen (15) days' notice of said hearing date.

(3) If no request for hearing is made within the time specified, the license shall be deemed denied, suspended or revoked. The department shall notify

the applicant or licensee of the decision of the director or his authorized representative within thirty (30) days after conclusion of the hearing.

**History.**

1963, ch. 320, § 11, p. 901; am. 1974, ch. 23, § 117, p. 633; am. 1990, ch. 215, § 19, p. 567.

**39-1219. Appeal from decision of director.** — If an applicant or licensee feels aggrieved by a decision rendered as a result of a hearing, as provided in section 39-1218, Idaho Code, appeal may be taken to the district court of the county in which the group or foster home, facility, program or agency is located, in the manner and form as provided in section 39-1212, Idaho Code, provided, however, the filing of notice of appeal shall not, unless otherwise ordered, stay the proceedings of the director.

**History.**

1963, ch. 320, § 12, p. 901; am. 1974, ch. 23, § 118, p. 633; am. 1990, ch. 215, § 20, p. 567; am. 2002, ch. 219, § 9, p. 598.

**STATUTORY NOTES**

**Effective Dates.**

Section 182 of S.L. 1974, ch. 23 provided the act should be in full force and effect on and after July 1, 1974.

**39-1220. Operating without license misdemeanor.** — Any person or persons who operate a foster home, children’s agency, children’s therapeutic outdoor program or children’s residential care facility, within this state, without first obtaining a license as provided in this chapter shall be guilty of a misdemeanor. However, in the event of an initial citation for violation of the provisions of this section, if a person makes the application required within thirty (30) days, the complaint shall be dismissed. The penalty for violation of the provisions of this section shall be three hundred dollars (\$300) for each day of a continuing violation, which penalty shall accrue from thirty (30) days following the initial notice of violation in the event of a finding of violation.

**History.**

1963, ch. 320, § 13, p. 901; am. 1990, ch. 215, § 21, p. 567; am. 2001, ch. 93, § 14, p. 232; am. 2002, ch. 219, § 10, p. 598.

**39-1221. Removal of children.** — Any child or children receiving child care in a children’s residential care facility or children’s therapeutic outdoor program found to be operating without a license may be removed from such home, agency or institution upon order of the magistrate court of the county in which the child is receiving care and returned to the child’s own home, or placed in the custody of the department if the child’s custodial parent is not available. The prosecuting attorneys of the several counties shall represent the department at all stages of the proceedings before the magistrate court. The magistrate court shall retain jurisdiction relative to child custody pursuant to the provisions of this section. In the event that the prosecuting attorney in the county where the alleged violation occurred fails or refuses to act within sixty (60) days of notification of the violation, the attorney general is authorized to prosecute violations under this chapter.



**History.**

1963, ch. 320, § 14, p. 901; am. 1990, ch. 214, § 4, p. 564; am. 1990, ch. 215, § 22, p.

567; am. 2001, ch. 93, § 15, p. 232; am. 2002, ch. 219, § 11, p. 598.

**STATUTORY NOTES****Cross References.**

Attorney general, § 67-1401 et seq.

**39-1222. Action against unlicensed foster home, children's agency, children's therapeutic outdoor program or children's residential care facility.** — Notwithstanding the existence or pursuit of any other remedy, the department shall, upon showing good cause to the prosecuting attorney who shall represent the department in the proceeding, maintain an action in the name of the state for injunction or other process against a person as defined herein who shall hereafter operate or maintain any foster home, children's agency, children's therapeutic outdoor program or children's residential care facility without first having secured a license pursuant to the provisions of this chapter. Upon a finding that the safety of children at a foster home, children's agency, children's therapeutic outdoor program or children's residential care facility is endangered, the department has the authority to immediately revoke a license.

**History.**

1963, ch. 320, § 15, p. 901; am. 1990, ch.

215, § 23, p. 567; am. 2001, ch. 93, § 16, p. 232; am. 2002, ch. 219, § 12, p. 598.

**STATUTORY NOTES****Compiler's Notes.**

Section 16 of S.L. 1963, ch. 320 read: "If any section, subsection, subdivision, paragraph, sentence, part or provision of this act shall be found to be invalid or ineffective by any court it shall be conclusively presumed that this act would have been passed by the legislature

without such invalid or ineffective section, subsection, subdivision, paragraph, sentence, part or provision, and this act as a whole shall not be declared invalid by reason of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, parts or provisions may be so found invalid."

**39-1223. Construction of act.** — This act shall be liberally construed to the end that the legislative policy expressed herein is attained.

**History.**

1963, ch. 320, § 17, p. 901.

**STATUTORY NOTES****Compiler's Notes.**

The words "this act" refer to S.L. 1963, ch.

320, which is codified as §§ 39-1201, 39-1202, 39-1210, 39-1211, and 39-1213 to 39-1224.

**39-1224. Title of act.** — This act shall be known and cited as the "Child Care Licensing Reform Act," and the caption for chapter 12, title 39, Idaho Code, shall so designate.

**History.**

1963, ch. 320, § 18, p. 901; am. 1987, ch. 56, § 4, p. 92; am. 1990, ch. 215, § 24, p. 567.

### STATUTORY NOTES

#### Compiler's Notes.

The words "this act" refer to S.L. 1963, ch. 320, which is codified as §§ 39-1201, 39-1202, 39-1210, 39-1211, and 39-1213 to 39-1224.

#### Effective Dates.

Section 19 of S.L. 1963, ch. 320 provided that the act should take effect from and after September 1, 1963.

Section 6 of S.L. 1987, ch. 56 read: "In order to achieve an orderly transition pursuant to this act, the provisions of this act authorizing the promulgation of rules, fees and forms shall be in full force and effect on and after October 1, 1987, and the remaining portions of this act shall be in full force and effect on and after March 1, 1988."

## CHAPTER 13

## HOSPITAL LICENSES AND INSPECTION

#### SECTION.

- 39-1301. Definitions.
- 39-1301A. Waivers for certified family homes — Definitions.
- 39-1301B. Nursing facility conversions.
- 39-1301C. Deemed status of hospice agency and its hospice home — No Idaho license or certification required.
- 39-1302. Purpose.
- 39-1303. Licensure.
- 39-1303a. Definition of services and regulation of facilities in preceding section.
- 39-1303b. Agreements for allocation of services between neighboring hospitals.
- 39-1303c. Curtailment of required services.
- 39-1303d. [Amended and redesignated.]
- 39-1304. Application for license.
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- 39-1307. Rules, regulations, and enforcement.
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- 39-1309. Inspections and consultations.
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- 39-1318. Hospital boards — Duty to acquire, construct, improve and maintain public hospitals and medical clinics.
- 39-1319. Definitions.
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#### SECTION.

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- 39-1329. Meetings — Quorum — Vacancies.
- 39-1330. Biennial election of board members — Terms of office.
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- 39-1331. Powers and duties of board.
- 39-1332. Annual statement of valuation of taxable property.
- 39-1333. Levy and collection of taxes — Initial financing.
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- 39-1336. Maturing indebtedness a consideration in annual levies.
- 39-1337. Tax rate — Certification — Levy and collection.
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## SECTION.

- 39-1342. Indebtedness incurred upon favorable vote — Resubmission of proposition not received favorably.
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- 39-1355. Existing tax supported hospitals may consolidate.
- 39-1356. Equalization of levy between consolidating hospitals.

## SECTION.

- 39-1356A. Hospital districts in more than one county. [Repealed.]
- 39-1357. Adjustment of boundary lines or consolidation of hospital districts.
- 39-1358 — 39-1389. [Repealed.]
- 39-1390. Reports to law enforcement agencies of certain types of injuries.
- 39-1391. Emergency treatment without admission — Liability.
- 39-1391a. Emergency treatment not to constitute admission.
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- 39-1391c. Immunity from civil liability.
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- 39-1392d. Property of health care organization.
- 39-1392e. Limited exceptions to privilege and confidentiality.
- 39-1392f. Peer review.
- 39-1393. Notification of professional review action imposed upon physician or emergency medical services personnel.
- 39-1394. Patient care records — Retention — Authentication.
- 39-1395. Practice of podiatry — Medical staff membership.

**39-1301. Definitions.** — For purposes of this chapter the following definitions will apply:

(a) "Hospital" means a facility which:

(1) Is primarily engaged in providing, by or under the supervision of physicians,

(a) concentrated medical and nursing care on a twenty-four (24) hour basis to inpatients experiencing acute illness; and

(b) diagnostic and therapeutic services for medical diagnosis and treatment, psychiatric diagnosis and treatment, and care of injured, disabled, or sick persons; and

(c) rehabilitation services for injured, disabled, or sick persons; and

(d) obstetrical care.

(2) Provides for care of two (2) or more individuals for twenty-four (24) or more consecutive hours.

(3) Is staffed to provide professional nursing care on a twenty-four (24) hour basis.

(b) "Nursing facility" (nursing home) means a facility whose design and function shall provide area, space and equipment to meet the health needs of two (2) or more individuals who, at a minimum, require inpatient care and services for twenty-four (24) or more consecutive hours for unstable chronic health problems requiring daily professional nursing supervision



and licensed nursing care on a twenty-four (24) hour basis, restorative, rehabilitative care, and assistance in meeting daily living needs. Medical supervision is necessary on a regular, but not daily, basis.

(c) "Intermediate care facility for people with intellectual disabilities (ICF/ID)" means a nonnursing home facility, designed and operated to meet the unique educational, training, habilitative and medical needs of the developmentally disabled through the provision of active treatment.

(d) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.

(e) "Government unit" means the state, or any county, municipality, or other political subdivision, or any department, division, board or other agency thereof.

(f) "Licensing agency" means the department of health and welfare.

(g) "Board" means the board of health and welfare.

(h) "Physician" means an individual licensed to practice medicine and surgery by the Idaho state board of medicine or the Idaho state board of podiatry.

(i) "Authorized provider" means an individual who is a nurse practitioner or clinical nurse specialist, licensed to practice in Idaho in accordance with the Idaho nurse practice act; or a physician's assistant, licensed by the Idaho state board of medicine.

(j) "Hospice house" means a facility that is owned and operated by a medicare certified hospice agency for the purpose of providing inpatient hospice services consistent with 42 CFR 418.110.

#### History.

1947, ch. 133, § 1, p. 324; am. 1974, ch. 23, § 119, p. 633; am. 1980, ch. 159, § 1, p. 333; am. 1981, ch. 32, § 1, p. 51; am. 1992, ch. 56,

§ 1, p. 162; am. 1992, ch. 134, § 1, p. 421; am. 2000, ch. 274, § 5, p. 799; am. 2010, ch. 84, § 1, p. 163; am. 2010, ch. 235, § 24, p. 542.

### STATUTORY NOTES

#### Cross References.

Hospital Liability Trust Act, § 41-3701 et seq.

#### Amendments.

This section was amended by two 1992 acts which appear to be compatible and have been compiled together.

The 1992 amendment, by ch. 56, § 1, in the introductory sentence substituted "chapter" for "act"; in subsection (d) added "unique" following "designed and operated to meet the"; at the end of subsection (d) added "through the provision of active treatment"; deleted former subsection (e) which read: "Proprietary home health agency" means a private or investor owned, profit-making agency which provides multiple service health care programs. These programs must be physician directed and must include skilled nursing and at least one other service and be centrally administered and coordinated. The services are provided in the patient's place of residence to the patient or his family for the purpose of promoting, main-

taining, or restoring health or minimizing the effects of illness or disability."; and redesignated former subsections (f) through (j) as subsections (e) through (i).

The 1992 amendment, by ch. 134, added "or the Idaho state board of podiatry" at the end of subsection (j) [now (h)].

This section was amended by two 2010 acts which appear to be compatible and have been compiled together.

The 2010 amendment, by ch. 84, added subsection (j).

The 2010 amendment, by ch. 235, substituted "people with intellectual abilities" for "the mentally retarded" in subsection (c).

#### Compiler's Notes.

The nurse practice act, referred to in subsection (i), does not exist. Provisions relating to the licensing and governance of nurses can be found in chapter 14, title 54, Idaho Code.

The words enclosed in parentheses so appeared in the law as enacted.

## JUDICIAL DECISIONS

**Cited in:** Greater Boise Auditorium Dist. v. Royal Inn, 106 Idaho 884, 684 P.2d 286 (1984).

## RESEARCH REFERENCES

**Am. Jur.** — 40A Am. Jur. 2d, Hospitals and Asylums, § 1 et seq.

**C.J.S.** — 41 C.J.S., Hospitals, § 1 et seq.

**39-1301A. Waivers for certified family homes — Definitions. —**

(1) Chapter 13, title 39, Idaho Code, shall not have the effect of preventing two (2) persons in need of the care described in section 39-1301(b), Idaho Code, from residing in a certified family home when:

(a) Each of the persons has given a written statement to the department requesting the arrangement and each person making the request is informed, not coerced, and competent; and

(b) The department finds the arrangement safe and effective; and

(c) The department issues a written waiver permitting the arrangement.

(2) The department shall use negotiated rulemaking when promulgating rules to carry out the provisions of this section to ensure a person's ability to choose services and service provider is considered.

(3) The department shall revoke any waiver granted pursuant to this section where it is determined there is a threat to the life or safety of either person or where one (1) of the persons leaves the living arrangement permanently or notifies the department in writing that he does not wish to reside in the setting with the other individual. Any waiver granted under this section shall be reviewed annually.

**History.**

I.C., § 39-1301a, as added by 1998, ch. 238,

§ 1, p. 795; am. and redesign. 2000, ch. 274,

§ 6, p. 799.

## STATUTORY NOTES

**Effective Dates.**

Section 2 of S.L. 1998, ch. 238 declared an emergency and provided this act shall be in

full force and effect thirty days after its passage and approval. Approved March 20, 1998.

**39-1301B. Nursing facility conversions. —** (1) A nursing facility that voluntarily reduces the number of its licensed beds to provide residential and assisted living services, certified family home services, adult day health services, respite care, hospice, outpatient therapy services, congregate meals, home health, senior wellness clinic, or other services provided under a medicaid home and community-based services waiver for the aged or disabled may convert the original facility or portion of the facility back, and thereby increase the number of nursing home beds to no more than the previously licensed number of nursing home beds provided the facility has been in continuous operation and has not been purchased or leased. Any conversion to the original licensed bed capacity, or to any portion thereof, shall comply with the same life safety code requirements as existed at the time the nursing facility voluntarily reduced its licensed beds.

(2) To convert beds back to nursing facility beds under this section, the nursing home must:

(a) Give notice of its intent to preserve conversion options to the department no later than thirty (30) days after the effective date of the license reduction; and

(b) Give notice to the department and any affected participant of the intent to convert beds back. If construction is required for the conversion of beds back, the notice of intent to convert beds back must be given, at a minimum, one (1) year prior to the effective date of license modification reflecting the restored beds; otherwise, the notice must be given a minimum of ninety (90) days prior to the effective date of license modification reflecting the restored beds.

(3) Conversion of beds back to nursing facility use under this section must be completed no later than four (4) years after the effective date of the license reduction. However, for good cause shown, the four (4) year period for conversion may be extended by the department for an additional four (4) year period.

**History.**

I.C., § 39-1301B, as added by 2000, ch. 274,  
§ 7, p. 799.

**39-1301C. Deemed status of hospice agency and its hospice home — No Idaho license or certification required.** — (1) A hospice house and its owner and operator medicare certified hospice agency must have and maintain deemed status through a centers for medicare & medicaid services recognized accrediting organization.

(2) Neither a medicare certified hospice agency nor its hospice home is required to be licensed or certified by the state of Idaho.

**History.**

I.C., § 39-1301C, as added by 2010, ch. 84,  
§ 2, p. 163.

**STATUTORY NOTES**

**Compiler's Notes.**

For centers for medicare & medicaid services, see <http://www.cms.gov>.

**39-1302. Purpose.** — The purpose of sections 39-1301 — 39-1314, Idaho Code, is to provide for the development, establishment and enforcement of standards (1) for the care and treatment of individuals in facilities or by agencies as defined, and (2) for the construction, maintenance and operation of facilities or agencies as defined which, in the light of advancing knowledge, will promote safe and adequate treatment of such individuals in facilities or by agencies as defined.

**History.**

1947, ch. 133, § 2, p. 324; am. 1980, ch. 159,  
§ 2, p. 333.



## RESEARCH REFERENCES

**Am. Jur.** — 40A Am. Jur. 2d, Hospitals and Asylums, § 1 et seq.

**C.J.S.** — 41 C.J.S., Hospitals, § 1 et seq.

**39-1303. Licensure.** — After January 1, 1948, no person or governmental unit, acting severally or jointly with any other person or governmental unit shall establish, conduct or maintain a facility or agency, as defined, in this state without a license under sections 39-1301 — 39-1314, Idaho Code.

**History.**

1947, ch. 133, § 3, p. 324; am. 1980, ch. 159, § 3, p. 333.

## STATUTORY NOTES

**Cross References.**

Health care certificate of need, §§ 39-4901 et seq.

## RESEARCH REFERENCES

**Am. Jur.** — 40 Am. Jur. 2d, Hospitals and Asylums, § 4.

**C.J.S.** — 41 C.J.S., Hospitals, § 1 et seq.

**39-1303a. Definition of services and regulation of facilities in preceding section.** — For the purposes of this act, the board shall have the authority to define the services requisite to the operation of the facilities defined and to establish rules and regulations and standards for the licensing of each type of facility and for the administrative personnel of each type of facility.

**History.**

1969, ch. 416, § 2, p. 1157; am. 1974, ch. 23,

§ 120, p. 633; am. and redesign. 1980, ch. 159, § 5, p. 333; am. 1981, ch. 32, § 2, p. 51.

## STATUTORY NOTES

**Prior Laws.**

Former § 39-1303a, which comprised S.L. 1969, ch. 416, § 1, p. 1157; am. 1975, ch. 59, § 1, p. 123, was repealed by S.L. 1980, ch. 159, § 4.

1303b, was amended and redesignated as § 39-1303a by § 5 of S.L. 1980, ch. 159.

The words "this act" refer to S.L. 1969, ch. 416, which is compiled as this section.

**Compiler's Notes.**

This section, formerly compiled as § 39-

## JUDICIAL DECISIONS

**Cited in:** Miller v. St. Alphonsus Reg'l Med. Ctr., Inc., 139 Idaho 825, 87 P.3d 934 (2004).

**39-1303b. Agreements for allocation of services between neighboring hospitals.** — Hospitals serving the same, or generally the same, geographical area may, by agreement or other arrangement to eliminate duplication, allocate as between themselves, in whole or in part, the

provision of those services and facilities defined by the board of health and welfare as requisite to their licensure as hospitals.

**History.** § 1, p. 470; am. and redesign. 1980, ch. 159,  
I.C., § 39-1303c, as added by 1976, ch. 122, § 6, p. 333.

STATUTORY NOTES

**Cross References.** Former § 39-1303b, which comprised S.L. 1969, ch. 416, § 2, p. 1157; am. 1974, ch. 23,  
Board of health and welfare, § 56-1005. § 120, p. 633, was amended and redesignated as § 39-1303a by S.L. 1980, ch. 159, § 5.

**Compiler's Notes.**  
This section formerly compiled as § 39-1303c was amended and redesignated as § 39-1303b by § 6 of S.L. 1980, ch. 159.

**39-1303c. Curtailment of required services.** — Any licensed facility or agency as defined, upon petition and showing of good cause therefor, to the satisfaction of the board may reduce, curtail or eliminate any service or facility which might otherwise be required for licensure by the board. A showing that the service or facility is unnecessary by reason of an arrangement with another facility or agency as defined, pursuant to section 39-1303b, Idaho Code, shall be conclusively deemed to be a showing of good cause under this section, and any licensed facility or agency as defined which, prior to January 1, 1976, had already reduced, curtailed or eliminated any service or facility by reason of the same being provided by another licensed facility or agency as defined, in the same community shall be deemed to have complied with this section.

**History.** § 2, p. 470; am. and redesign. 1980, ch. 159,  
I.C., § 39-1303d, as added by 1976, ch. 122, § 7, p. 333.

STATUTORY NOTES

**Compiler's Notes.** Former § 39-1303c, which comprised I.C., § 39-1303c, as added by 1976, ch. 122, § 1, p. 470, was amended and redesignated as § 39-1303b by S.L. 1980, ch. 159, § 6.

This section formerly compiled as § 39-1303d was amended and redesignated as § 39-1303c by § 7 of S.L. 1980, ch. 159.

**39-1303d. [Amended and redesignated.]**

STATUTORY NOTES

**Compiler's Notes.** designated as § 39-1303c by S.L. 1980, ch. 159, § 7.  
Former § 39-13903d, was amended and re-

**39-1304. Application for license.** — An application for a license shall be made to the licensing agency upon forms provided by it and shall contain such information as the licensing agency reasonably requires, which may include affirmative evidence of ability to comply with such reasonable standards, rules and regulations as are lawfully prescribed hereunder by the board of health and welfare.

**History.**

1947, ch. 133, § 4, p. 324; am. 1980, ch. 325,  
§ 4, p. 820.

**STATUTORY NOTES****Cross References.**

Board of health and welfare, § 56-1005.

**39-1305. Issuance and renewal of license.** — Upon receipt of an application for license and the license fee, when required, the licensing agency shall issue a license if the applicant meets the requirements established under this law. A license, unless sooner suspended or revoked, shall be renewable annually without charge upon filing by the licensee, and approval by the licensing agency, of an annual report upon such uniform dates and containing such information in such form as the licensing agency prescribes by regulation. Each license shall be issued only for the premises and persons or governmental units named in the application and shall not be transferable or assignable except with the written approval of the licensing agency. Licenses shall be posted in a conspicuous place on the licensed premises.

**History.**

1947, ch. 133, § 5, p. 324; am. 1980, ch. 159,  
§ 8, p. 333.

**39-1306. Denial or revocation of license — Hearings and review.** — The licensing agency may deny any application or revoke any license when persuaded by evidence that such conditions exist as to endanger the health or safety of any resident. Before denial or revocation is final, the licensing agency shall provide opportunity for a hearing at which time the owner or sponsor of any facility or agency, as defined, may appear and show cause why the license should not be denied or revoked. The board shall provide by rule and regulation a procedure whereby a waiver of a specific rule, regulation or standard may be granted in the event that good cause is shown for such a waiver and providing that said waiver does not endanger the health and safety of any resident. The decision to grant a waiver shall not be considered as precedent or be given any force or effect in any other proceeding. Said waiver may be renewed annually if sufficient written justification is presented to the licensing agency. Hearings for licensure, including denial and revocation, shall be conducted by the licensing agency pursuant to chapter 52, title 67, Idaho Code, and appeal shall be as provided therein.

**History.**

1947, ch. 133, § 6, p. 324; am. 1980, ch. 159,  
§ 9, p. 333.

**39-1307. Rules, regulations, and enforcement.** — The board shall have the authority to adopt, amend, and enforce rules, regulations and standards consistent with the provisions of this act which are designed to



protect the health and safety of patients being cared for in facilities or agencies as defined. [S.L. 1980, ch. 159, § 10.]

The board of health and welfare with the advice of the advisory hospital council, hereinafter created, shall adopt, amend, promulgate and enforce such rules, regulations and standards with respect to all hospitals or different types of hospitals to be licensed hereunder as may be designed to further the accomplishment of the purposes of this law in promoting safe and adequate treatment of individuals in hospitals in the interest of public health, safety, and welfare. [S.L. 1980, ch. 325, § 5] Provided that nothing in this act or the rules and regulations adopted pursuant thereto shall be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any home, facility or agency as defined, conducted for those who rely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denomination except as to sanitary and safe conditions of the premises, cleanliness of operation and its physical equipment.

#### History.

1947, ch. 133, § 7, p. 324; am. 1980, ch. 159, § 10, p. 333; 1980, ch. 325, § 5, p. 820.

### STATUTORY NOTES

#### Cross References.

Board of health and welfare, § 56-1005.

#### Amendments.

This section was amended by two 1980 acts, chapter 159, approved March 25, 1980, effective July 1, 1980, and chapter 325 approved April 2, 1980, effective April 2, 1980. The amendment of the first sentence by each chapter was not compatible with the amendment by the other. Therefore the amendment of the first sentence by each act has been compiled followed by its history. Chapter 159 substituted the sentence compiled above for a former first sentence which read: "The licensing agency with the advice of the advisory hospital council, hereinafter created, shall adopt, amend, promulgate and enforce such rules, regulations and standards with respect to all hospitals or different types of hospitals to be licensed hereunder as may be designed to further the accomplishment of the purposes of this law in promoting safe and adequate treatment of individuals in hospitals in the interest of public health, safety, and welfare." Chapter 325 amended such sentence by sub-

stituting "board of health and welfare" for "licensing agency" at the beginning of the sentence. It should be noted that the amendment by chapter 325 still contains a reference to the "advisory hospital council." The laws creating such council and defining its functions (§§ 39-1310, 39-1311) were repealed by S.L. 1980, ch. 159, § 12. Chapter 159 also amended the second sentence by substituting "facility or agency as defined" for "or institution." Chapter 325 made no other changes.

#### Compiler's Notes.

The term "this act", in the first sentence, refers to S.L. 1980, ch. 159, which is codified as §§ 39-1301, 39-1302 to 39-1303c, 39-1305 to 39-1307, 39-1308, 39-1310, and 39-1312 to 39-1314.

The term "this act", in the second paragraph, refers to S.L. 1947, ch. 133, which is compiled as §§ 39-1301, 39-1302, 39-1303, 39-1304 to 39-1307, 39-1308 to 39-1310, and 39-1312 to 39-1315.

#### Effective Dates.

Section 11 of S.L. 1980, ch. 325 declared an emergency. Approved April 2, 1980.

**39-1307A. Food purchasing and storage.** — Rules, regulations and minimum standards adopted by the board governing skilled nursing facilities or intermediate care facilities may provide requirements for food purchasing and storage, except that no rule, regulation or minimum

standard may limit the maximum size of a container in which milk for drinking purposes may be purchased.

**History.**

I.C., § 39-1307A, as added by 1988, ch. 330,  
§ 1, p. 992.

**39-1307B. Minimum staffing requirements.** — The board shall make no rule designed to limit the work activities of any person regularly assigned to duty as nursing or auxiliary personnel preceding the assignment within the facility governed by the rules, regulations and minimum standards of the board.

**History.**

I.C., § 39-1307B, as added by 1988, ch. 330,  
§ 2, p. 992.

**39-1308. Effective date of regulations.** — Any facility or agency as defined, which is in operation at the time of promulgation of any applicable rules or regulations or minimum standards under sections 39-1301 — 39-1314, Idaho Code, shall be given a reasonable time, not to exceed two (2) years from the date of such promulgation, within which to comply with such rules and regulations and minimum standards, except for those conditions which present an imminent hazard to the health and safety of patients housed therein.

**History.**

1947, ch. 133, § 8, p. 324; am. 1980, ch. 159,  
§ 11, p. 333.

**39-1309. Inspections and consultations.** — The licensing agency shall make or cause to be made such inspections and investigations as it deems necessary. The licensing agency may prescribe by regulations that any licensee or applicant desiring to make specified types of alteration or addition to its facilities or to construct new facilities shall before commencing such alteration, addition or new construction, submit plans and specifications therefor to the licensing agency for preliminary inspection and approval or recommendations with respect to compliance with the regulations and standards herein authorized. Necessary conferences and consultations may be provided.

**History.**

1947, ch. 133, § 9, p. 324.

**39-1310. Information.** — Information received by the licensing agency through filed reports, inspection, or as otherwise authorized under this law, which would identify individual residents or patients of facilities or agencies as defined shall be subject to disclosure according to chapter 3, title 9, Idaho Code, except in a proceeding involving the question of licensure. Public disclosure of information obtained by the licensing agency for the purposes of this act shall be governed by chapter 3, title 9, Idaho Code. Nothing in this act, however, shall be construed, nor shall any rule or regulation be

promulgated under this section, as to impair, restrict or alter the confidentiality and privilege afforded the physician and patient communications, including without limitation, documentation thereof in records of facilities or agencies as defined, or communications to and with nurses or other assisting persons or entities, nor shall this act be construed to amend by implication such physician-patient communication privilege as provided elsewhere in this code, including without limitation section 9-203(4), Idaho Code, which shall remain inviolate.

**History.** 159, § 13, p. 333; am. 1990, ch. 213, § 41, p. 480.  
1947, ch. 133, § 12, p. 324; am. 1975, ch. 133, § 1, p. 294; am. and redesign. 1980, ch.

STATUTORY NOTES

**Prior Laws.** The words “this act”, in the second sentence and near the end of the third sentence, refer to S.L. 1975, ch. 133, which is codified as this section.  
Former § 39-1310, which comprised S.L. 1947, ch. 133, § 10, p. 324; am. 1955, ch. 229, § 1, p. 502; am. 1963, ch. 108, § 1, p. 331; am. 1974, ch. 23, § 121, p. 633, was repealed by S.L. 1980, ch. 159, § 12.  
**Compiler’s Notes.** The words “this act”, near the beginning of the third sentence, refer to S.L. 1980, ch. 159, which is codified as §§ 39-1301, 39-1302 to 39-1303c, 39-1305 to 39-1307, 39-1308, 39-1310, and 39-1312 to 39-1314.  
This section was amended and redesignated from § 39-1312 by S.L. 1970, ch. 159, § 13.

**39-1311. Functions of advisory hospital council. [Repealed.]**

STATUTORY NOTES

**Compiler’s Notes.** 133, § 11, p. 324, was repealed by S.L. 1980, ch. 159, § 12.  
This section, which comprised 1947, ch.

**39-1312. Penalty for operating a facility or agency without license.** — Any person establishing, conducting, managing, or operating any facility or agency as defined, without a license under sections 39-1301 — 39-1314, Idaho Code, shall be guilty of a misdemeanor punishable by imprisonment in a county jail for a period of time not exceeding six (6) months, or by a fine not exceeding three hundred dollars (\$300), or by both, and each day of continuing violations shall constitute a separate offense.  
In the event that the county attorney in the county where the alleged violation occurred fails or refuses to act within sixty (60) days of notification of the violation, the attorney general is authorized to prosecute violations under this act.

**History.** 1947, ch. 133, § 15, p. 324; am. and redesign. 1980, ch. 159, § 15, p. 333.

STATUTORY NOTES

**Cross References.** Attorney general, § 67-1401 et seq.  
**Compiler’s Notes.** This section, formerly compiled as § 39-



1315, was amended and redesignated as § 39-1312 by § 15 of S.L. 1980, ch. 159.

The words "this act", at the end of the section, refer to S.L. 1980, ch. 159, which is codified as §§ 39-1301, 39-1302 to 39-1303c, 39-1305 to 39-1307, 39-1308, 39-1310, and 39-1312 to 39-1314.

Former § 39-1312, which comprised S.L. 1947, ch. 133, § 12, p. 324; am. 1975, ch. 133, § 1, p. 294, was redesignated as § 39-1310 by amendment of S.L. 1980, ch. 159, § 13.

**39-1313. Injunction to prevent operation without license.** — Notwithstanding the existence or pursuit of any other remedy, the licensing agency may in the manner provided by law maintain an action in the name of the state for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of a facility or agency as defined, without a license under sections 39-1301 — 39-1314, Idaho Code.

The licensing agency shall be represented by the county prosecutor of the county in which the violation occurs or by the office of the attorney general.

**History.**

1947, ch. 133, § 16, p. 324; am. and redesign. 1980, ch. 159, § 16, p. 333.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

**Prior Laws.**

Former § 39-1313, which comprised S.L. 1947, ch. 133, § 13, p. 324, was repealed by S.L. 1980, ch. 159, § 14.

**Compiler's Notes.**

This section, formerly compiled as § 39-1316, was amended and redesignated as § 39-1313 by § 16 of S.L. 1980, ch. 159.

**39-1314. Separability.** — If any provision of sections 39-1301 — 39-1314, Idaho Code, or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or application of this act which can be given effect without the invalid provision or application, and to this end the provisions of the act are declared to be severable.

**History.**

1947, ch. 133, § 18, p. 324; am. and redesign. 1980, ch. 159, § 17, p. 333.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-1314, which comprised S.L. 1947, ch. 133, § 14, p. 324, was repealed by S.L. 1980, ch. 159, § 14.

**Compiler's Notes.**

This section, formerly compiled as § 39-

1317, was amended and redesignated as § 39-1314 by § 17 of S.L. 1980, ch. 159.

The words "this act", in this section, refer to S.L. 1947, ch. 133, which is compiled as §§ 39-1301, 39-1302, 39-1303, 39-1304 to 39-1307, 39-1308 to 39-1310, and 39-1312 to 39-1315.

**39-1315. [Amended and redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.** designated as § 39-1312 by S.L. 1980, ch. 159, § 15.  
Former § 39-1315, was amended and re-

**39-1316. [Amended and redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.** designated as § 39-1313 by S.L. 1980, ch. 159, § 16.  
Former § 39-1316, was amended and re-

**39-1317. [Amended and redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.** igned as § 39-1314 by S.L. 1980, ch. 159, § 17.  
Former § 39-1317 was amended and redes-

**39-1318. Hospital boards — Duty to acquire, construct, improve and maintain public hospitals and medical clinics.** — The betterment and protection of the public health and care of the sick and afflicted are hereby declared to be the established and permanent policy of the state of Idaho, the duty is hereby imposed upon the hospital boards provided for by this act of acquiring, constructing, improving and maintaining public hospitals or medical clinics within their districts for the necessary care and treatment of persons requiring medical services.

**History.**  
1965, ch. 173, § 1, p. 340; am. 1976, ch. 132, § 1, p. 497.

**STATUTORY NOTES**

**Prior Laws.**  
S.L. 1965, ch. 173, § 37, repealed the old laws relating to hospital districts in their entirety. Such laws comprised S.L. 1953, ch. 121, §§ 1 to 38, p. 177, formerly compiled as §§ 39-1318 to 39-1353; S.L. 1955, ch. 184, §§ 1 to 38, p. 372, formerly compiled as §§ 39-1354 to 39-1389; S.L. 1959, ch. 70, §§ 1 to 3, p. 151, formerly compiled as §§ 39-1320, 39-1389, 39-1390; S.L. 1961, ch. 59, § 1, p. 87, formerly compiled as § 39-1356A. Owing to

this complete repeal and to the fact that the 1965 act covers the same general subject-matter, the old section numbers have been utilized in numbering the 1965 act.

**Compiler's Notes.**  
The words "this act" refer to S.L. 1965, ch. 173, which is compiled as §§ 39-1318 to 39-1325, 39-1326 to 39-1330, and 39-1331 to 39-1353.

**39-1319. Definitions.** — A "hospital district" is one to furnish general hospital services, and together with such hospital services, nursing home services, or medical clinic services to the general public and all other such services as may be necessary for the care of the injured, maimed, sick, disabled, convalescent or long-term care patients. As used in sections 39-1318 through 39-1357, Idaho Code, "medical clinic" means a place devoted primarily to the maintenance and operation of facilities for outpa-

tient medical, surgical and emergency care of acute and chronic conditions or injury.

The word "board" as used in this act shall mean the board of trustees of the district. A "qualified elector" of a district within the meaning of and entitled to vote under this act, is a person qualified to vote at general elections in this state, and who has been a bona fide resident of the district for at least thirty (30) days prior to any election in the district. A "taxpayer" within the meaning of and as used in this act is a person or the husband or wife of a person whose name appears on the tax rolls of the county and is there assessed with unexempted real or personal property owned and subject to taxation within the boundaries of the district.

Whenever the term "publication" is used in this act and no manner specified therefor, it shall be taken to mean once a week for three (3) consecutive weeks in at least one (1) newspaper of general circulation in the district. It shall not be necessary that publication be made on the same day of the week in each of the three (3) weeks, but not less than fourteen (14) days (excluding the first day of publication), shall intervene between the first publication and the last publication, and publication shall be complete on the day of the last publication.

#### History.

1965, ch. 173, § 2, p. 340; am. 1976, ch. 132,

§ 2, p. 497; am. 1990, ch. 354, § 1, p. 956; am. 1993, ch. 137, § 1, p. 337.

#### STATUTORY NOTES

#### Prior Laws.

Former § 39-1319 was repealed. See Prior Laws, § 39-1318.

173, which is compiled as §§ 39-1318 to 39-1325, 39-1326 to 39-1330, and 39-1331 to 39-1353.

#### Compiler's Notes.

The words "this act" refer to S.L. 1965, ch.

The words enclosed in parentheses so appeared in the law as enacted.

**39-1320. Organization of hospital district — Petition — Contents — Filing.** — The organization of a hospital district shall be initiated by a petition filed with the board of county commissioners of the county of [in] which the said district is situated. Said petition shall be signed by not less than ten per cent (10%) of the qualified electors and taxpayers of the proposed district. The equalized county assessment list last preceding the presentation of the petition for the organization of the hospital district shall be sufficient evidence of the title for the purpose of this act, but other evidence may be received.

The petition shall set forth:

(1) The name of the proposed district consisting of a chosen name preceding the words "hospital district".

(2) A general statement of the purpose of the formation of said district.

(3) A general description of the boundaries of the district or territory to be included therein with such certainty to enable a property owner to determine whether or not his property is within the district.

(4) A map showing the general boundaries of such district in relation to outstanding natural monuments and terraine features.

(5) A prayer for the organization of the district.

Similar petitions or duplicate copies of the same petition for the organi-



zation of the same district may be filed and shall together be regarded as one (1) petition. All petitions filed prior to the hearing on the first petition filed shall be considered by the board the same as though filed with the first petition placed on file.

Provided, however, that no such district shall be organized unless it shall appear that the boundaries of said district are wholly within the limits of a single county and that there shall be no unnatural extension of the boundaries of said district.

The petition together with all maps and other papers filed therewith shall at all proper hours be open to public inspection in the office of the clerk of the board of county commissioners between the date of their said filing and the date of an election to be held as hereinafter provided.

**History.**

1965, ch. 173, § 3, p. 340.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-1320 was repealed. See Prior Laws, § 39-1318.

**Compiler's Notes.**

The bracketed word "in" in the first para-

graph was inserted by the compiler to supply the probable intended term.

The words "this act" refer to S.L. 1965, ch. 173, which is compiled as §§ 39-1318 to 39-1325, 39-1326 to 39-1330, and 39-1331 to 39-1353.

**39-1321. Joint districts in one or more counties.** — A hospital district as provided in section 39-1320[, Idaho Code,] may be organized where it appears that said district will be within the boundaries of one (1) or more counties, where all the other requirements provided in section 39-1320[, Idaho Code,] have been met, and the county commissioners of each county in which such district will be formed shall affirmatively find that the public welfare of that portion of the county will be served by the inclusion thereof in such joint county district, that such district is not an unnatural extension of a service district for hospital services, and that the petition for such district has been signed by not less than 10% of the qualified electors and taxpayers of that portion of the proposed district lying within the county.

**History.**

1965, ch. 173, § 4, p. 340.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-1321 was repealed. See Prior Laws, § 39-1318.

**Compiler's Notes.**

The bracketed insertions were added by the

compiler to conform to the statutory citation style.

**39-1322. Notice of time of hearing on petition — Order fixing boundaries — Appeal.** — When such petition is presented to the board of county commissioners and filed in the office of the clerk of such board, the said board shall set a time for a hearing upon such petition which shall not

be less than four (4) nor more than six (6) weeks from the date of the presentation and filing of such petition. A notice of time of such hearing shall be published by said board once each week for three (3) successive weeks previous to the time set for such hearing in a newspaper published within the county in which said district is situated. Said notice shall state that a hospital district is proposed to be organized giving the proposed boundaries thereof and that any taxpayer within the proposed boundaries of such proposed district may on the date fixed for such hearing appear and offer any objection to the organization of such district, the proposed boundaries thereof or the including or excluding of any real property, therein or therefrom. After hearing and considering any and all objections, if any such be interposed, the county commissioners shall thereupon make an order, either denying such petition or granting the same, with or without modification, and shall accordingly fix the boundaries of such proposed district in any order granting such petition. The boundaries so fixed shall be the boundaries of said district after its organization be completed as provided in this act, and a map showing the boundaries of such proposed district, as finally fixed and determined by the board of county commissioners, shall be prepared and filed in the office of the clerk of said board. Any person aggrieved by said order, or any taxpayer within said proposed district may take an appeal from said order establishing the boundaries of said district, in the manner provided by sections 31-1509, 31-1510, 31-1511, and 31-1512, Idaho Code, on questions of both law and fact.

**History.**

1965, ch. 173, § 5, p. 340.

**STATUTORY NOTES****Prior Laws.**

Former § 39-1322 was repealed. See Compiler's notes, § 39-1318.

**Compiler's Notes.**

Sections 31-1509, 31-1510, and 31-1511, referred to near the end of this section, were repealed by S.L. 1993, ch. 103, § 1. Section 31-1512, also referred to near the end of this section, was repealed by S.L. 1994, ch. 35, § 1

and S.L. 1994, ch. 241, § 2. Appeals of decisions of boards of county commissioners are now governed by the Idaho administrative procedure act, chapter 52, title 67, Idaho Code.

The words "this act" refer to S.L. 1965, ch. 173, which is compiled as §§ 39-1318 to 39-1325, 39-1326 to 39-1330, and 39-1331 to 39-1353.

**39-1323. Election in proposed district — Notice — Qualifications of voters.** — Such petition may be filed with the clerk of the board of county commissioners at any time, and on such filing and after the county commissioners have made an order finally fixing and determining the boundaries of the proposed district, and have made and entered an order calling an election to be held, subject to the provisions of section 34-106, Idaho Code, in said district, said clerk shall cause to be published a notice of an election to be held in such proposed district for the purpose of determining whether or not the same shall be organized under the provisions of this act. Provided, however, if an appeal is taken from such order establishing the boundaries, such election shall not be held until after the determination of such appeal. Such notice shall plainly and clearly desig-

nate the boundaries in or the boundaries of said districts, and shall state the name of the proposed districts as designated in the petition.

Such notice shall be published once not less than twelve (12) days prior to the election, and a second time not less than five (5) days prior to such election in a newspaper published within the county as aforesaid. At such election the voters shall vote for or against the organization of the district. No person shall be entitled to vote at any election held under the provisions of this chapter unless he or she shall possess all the qualifications required of electors under the general laws of the state and be a resident of the proposed district.

**History.**

1965, ch. 173, § 6, p. 340; am. 1995, ch. 118, § 48, p. 417.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-1323 was repealed. See Prior Laws, § 39-1318.

173, which is compiled as §§ 39-1318 to 39-1325, 39-1326 to 39-1330, and 39-1331 to 39-1353.

**Compiler's Notes.**

The words "this act" refer to S.L. 1965, ch.

**39-1324. Election — Manner of conducting.** — Such election shall be held and conducted in accordance with the general election laws of the state, including the provisions of chapter 14, title 34, Idaho Code.

The board of county commissioners shall establish as many election precincts within such proposed district as may be necessary, and define the boundaries thereof. The county clerk shall appoint judges of election, one (1) of whom shall act as clerk for each such election precinct who shall perform the same duties as judges of election under the general laws of the state, and the result of such election shall be certified, canvassed and declared by the board of county commissioners. The reasonable compensation of said judges and clerks of election, and the expenses of publication of notices, printing of ballots and furnishing of supplies for the election shall be paid by the petitioners, and to this end the board of county commissioners are empowered to require the deposit of all estimated costs in advance of such election.

**History.**

1965, ch. 173, § 7, p. 340; am. 1995, ch. 118, § 49, p. 417; am. 2009, ch. 341, § 65, p. 993.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-1324 was repealed. See Prior Laws, § 39-1318.

**Amendments.**

The 2009 amendment, by ch. 341, in the first paragraph, updated the title reference; and, in the last paragraph, deleted "which said precincts may thereafter be changed by the hospital board of such district in case such

district be organized" from the end of the first sentence, and, in the second sentence, substituted "The county clerk shall appoint judges of election" for "Said board of county commissioners shall also appoint three (3) judges of election."

**Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.



**39-1325. Election results — Canvass and certification — Order establishing district.** — Immediately after any election for voting upon the organization of a hospital district, the judges of said election shall certify the official results of said election to the clerk of said board of commissioners. The said board of commissioners shall, at its next regular meeting, proceed to canvass the votes cast at such election, and if upon such canvass it shall appear that one half (1/2) or more of the votes cast at such election are “..... hospital district, no.”, then a record of that fact shall be duly entered upon the minutes of said board, and all proceedings in regard to the organization of said district shall be void. If it shall appear, upon such canvass, that more than one half (1/2) of the votes cast at such election are “..... hospital district, yes.”, the said board shall by order entered on its minutes, declare such territory duly organized as a hospital district under the name designated in the petition.

If an order be entered establishing the district, such order shall be deemed final and no appeal or writ of error shall lie therefrom, and the entry of such order shall finally and exclusively establish the regular organization of the said district against all persons, except the state of Idaho in an action in the nature of a writ of quo warranto commenced by the attorney general within thirty (30) days after the date of said order declaring such district organized, as herein provided, and not otherwise. The organization of said district shall not be directly or collaterally questioned in any suit, action or proceeding except as herein expressly authorized.

Said board shall cause one (1) copy of such order duly certified to be immediately filed for record in the office of the county recorder in the county in which such district is situated and shall transmit to the governor one (1) certified copy thereof.

From and after the date of such filing of said order of the board of county commissioners, declaring such territory duly organized as a hospital district, the organization of such district shall be completed, and thereupon the district shall be a governmental subdivision of the state of Idaho and a body corporate with all the powers of a public or quasi-municipal corporation.

**History.**

1965, ch. 173, § 8, p. 340.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

**Prior Laws.**

Former § 39-1325 was repealed. See Prior Laws, § 39-1318.

**39-1325A. Petitions for dissolution of hospital districts. —**

(1) Proceedings for the dissolution of a hospital district may be initiated by a petition containing the signatures of qualified electors of the district or owners of property within the district equal in number to ten percent (10%) of the qualified electors and taxpayers of the district, the same percentage

required for the organization of the district, but not earlier than four (4) years after the date of its establishment.

(2) The petition, when completed and verified, shall be filed with the clerk of the court of the county or counties if more than one (1) county is involved. The county clerk shall publish notice and the county commissioners shall hold a hearing on the matter. If necessary, they shall hold an election, subject to the provisions of section 34-106, Idaho Code, on the matter. The hearing and election shall be held in accordance with the terms and provisions of title 34, Idaho Code. The disposition of hospital district assets on dissolution and the provision for payment of district indebtedness shall be made in accordance with the provisions of sections 63-4105 and 63-4106, Idaho Code.

(3) If the hospital district embraces territory in more than one (1) county, an election for its dissolution shall be deemed approved only if a majority of the votes cast in each such county were cast in the affirmative. If, upon the canvass of ballots, it be determined that the proposition has been approved, the board of county commissioners of each county shall enter its order to that effect, subject to the provisions of section 39-1325C, Idaho Code, and the order shall by them be made a matter of record.

**History.**  
I.C., § 39-1325a, as added by 1988, ch. 173, § 1, p. 303; am. 1993, ch. 137, § 2, p. 337; am.

1995, ch. 118, § 50, p. 417; am. and redesign. 2004, ch. 263, § 1, p. 742; am. 2009, ch. 341, § 66, p. 993.

STATUTORY NOTES

**Compiler’s Notes.**  
This section was formerly compiled as § 39-1325a and was amended and redesignated by § 1 of S. L. 2004, ch. 263.

sentence and substituted “title 34, Idaho Code” for “sections 40-1803 through 40-1809, Idaho Code” in the third sentence.

**Amendments.**  
The 2009 amendment, by ch. 341, in the second paragraph, substituted “county clerk” for “county commissioners” and inserted “the county commissioners shall” in the second

**Effective Dates.**  
Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

**39-1325B. Nonfunctioning district.** — Any hospital district which fails or has ceased to function for two (2) or more years may be dissolved by the board or boards of county commissioners of the county or counties in which it is located. The county commissioners may initiate such action by resolution subject to the provisions of section 39-1325C, Idaho Code.

**History.**  
I.C., § 39-1325B, as added by 2004, ch. 263, § 2, p. 742.

**39-1325C. Effect of dissolution.** — (1) A dissolved hospital district continues its existence under the supervision of the board or boards of county commissioners of the county or counties in which the district is located, but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including the power to levy property taxes pursuant to the provisions of this chapter.

(2) The disposition of such property shall be governed by the provisions of section 63-4105, Idaho Code.

(3) Upon completion of winding up and liquidating the district's business and affairs, the commissioners shall enter a final order terminating the district and shall notify in writing the social security administrator at the Idaho state controller's office within ninety (90) days of the dissolution.

**History.**

I.C., § 39-1325C, as added by 2004, ch. 263,  
§ 2, p. 742.

**39-1326. Board of trustees of district — Qualifications of members.** — The board of trustees of such hospital district shall consist of seven (7) residents of the district who shall be elected or appointed as herein provided. Immediately following the establishment of a hospital district, the commissioners in the county in which the same is established shall appoint the seven (7) members of the first board, three (3) members to act until the first biennial election, two (2) until the second biennial election, and two (2) until the third biennial election, all of whom shall serve until the election and qualification of their successors.

No person shall be qualified to serve as a trustee of a district organized under the provisions of this act unless he or she shall be a resident of the hospital district and a qualified elector of the state of Idaho.

**History.**

1965, ch. 173, § 9, p. 340; am. 1973, ch. 99,  
§ 1, p. 168.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-1326 was repealed. See Prior Laws, § 39-1318.

173, which is compiled as §§ 39-1318 to 39-1325, 39-1326 to 39-1330, and 39-1331 to 39-1353.

**Compiler's Notes.**

The words "this act" refer to S.L. 1965, ch.

**39-1327. Oaths and bonds of board members.** — Whenever a district has been declared duly organized the members of the board shall qualify by filing with the clerk of the board of county commissioners their oaths of office, and corporate surety bonds at the expense of the district in an amount not to exceed one thousand dollars (\$1,000) each, the form thereof to be fixed and approved by the board of county commissioners conditioned for the faithful performance of their duties as trustees.

**History.**

1965, ch. 173, § 10, p. 340.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-1327 was repealed. See Prior Laws, § 39-1318.



**39-1328. Organization of board — Seal — Duties of treasurer — Compensation of members — Financial statement.** — After taking oath and filing bonds, the board shall choose one (1) of its members as chairman of the board and president of the district, and shall elect a secretary and treasurer of the board and of the district who may or may not be members of the board. The secretary and treasurer may be one (1) person. Such board shall adopt a seal and the secretary shall keep in a well bound book a record of all its proceedings, minutes of all meetings, certificates, contracts, bonds given by employees and all corporate acts which shall be open to inspection by all owners of real property in the district as well as to all other interested parties.

The treasurer shall keep strict and accurate accounts of all moneys received by and disbursed for and on behalf of the district in permanent records. He shall file with the board of trustees of the district, at the expense of the district, a corporate fidelity bond in an amount to be fixed by the board of trustees, in any case not less than ten thousand dollars (\$10,000), conditioned on the faithful performance of the duties of his office.

Each member of the board may receive as compensation for his services, a sum not in excess of six hundred dollars (\$600) per annum, payable monthly. Such annual sum shall be fixed by the board, by resolution adopted by majority vote, at a regular monthly meeting in advance of the fiscal year in which it is to become effective. In addition, each member of the board shall receive the amount of his actual and necessary expenses incurred in the performance of his official duties as authorized by the board of trustees. No member of the board shall receive any compensation as an employee of the district or otherwise, other than that herein provided, and no member of the board shall be interested in any contract or transaction with the district except in his official representative capacity.

It shall be the duty of the board of trustees to cause an audit to be made of all financial affairs of the district during each fiscal year which audit shall be made within one hundred twenty (120) days following the end of the fiscal year. A financial statement shall be certified by the person making such audit, which shall be published in the newspaper of general circulation in the district in one (1) issue not more than thirty (30) days following the audit; such audit shall be made by registered accountant or certified public accountant, who is not otherwise employed by the district.

The court having jurisdiction of the district shall have the power to remove directors for cause shown on petition, notice and hearing.

**History.** 101, § 1, p. 215; am. 1981, ch. 100, § 1, p. 1965, ch. 173, § 11, p. 340; am. 1977, ch. 147.

#### STATUTORY NOTES

**Prior Laws.**

Former § 39-1328 was repealed. See Prior Laws, § 39-1318.

**39-1329. Meetings — Quorum — Vacancies.** — The board shall meet regularly once each month at a time and place to be designated by the board.

Special meetings may be held as often as the needs of the district require on notice to each member of the board. Four (4) members of the board shall constitute a quorum at any meeting. Any vacancy on the board shall be filled by the remaining members or member of the board, the appointee to act until the next biennial election, when the vacancy shall be filled by election. If the board shall fail, neglect or refuse to fill any vacancy within thirty (30) days after the same occurs, the board of county commissioners of the county in which said district is situated shall fill such vacancy.

**History.**

1965, ch. 173, § 12, p. 340.

**STATUTORY NOTES****Prior Laws.**

Former § 39-1329 was repealed. See Prior Laws, § 39-1318.

**39-1330. Biennial election of board members — Terms of office. —** On the third Tuesday of May in the next odd-numbered calendar year after the organization of any district, and on the third Tuesday of May every second year thereafter, an election shall be held which shall be known as the biennial election of the district.

At the first biennial election in any district hereafter organized and each sixth year thereafter there shall be elected by the qualified electors of the district three (3) members of the board to serve for a term of six (6) years; at the second biennial election and each sixth year thereafter there shall be elected two (2) members of the board to serve for a term of six (6) years; at the third biennial election and each sixth year thereafter there shall be elected two (2) members of the board to serve for terms of six (6) years.

The county clerk shall provide for holding such elections and shall appoint judges to conduct it; the county clerk shall give notice of election by publication and shall arrange such other details in connection therewith as the board may direct. The returns of the election shall be certified to and shall be canvassed and declared by the board of county commissioners. The candidate or candidates according to the number of directors to be elected, receiving the most votes shall be elected. Any new member of the board shall qualify in the same manner as members of the first board qualify.

In any election for director, if after the deadline for filing a declaration of intent as a write-in candidate, it appears that only one (1) qualified candidate has been nominated for a director's position, it shall not be necessary for the candidate to stand for election, and the board of directors of the district shall declare such candidate elected as a director, and the secretary of the board of the district shall immediately make and deliver to such person a certificate of election.

For the purpose of achieving an orderly transition to a term of six (6) years and to hold trustee elections in odd-numbered years, the following schedule shall be followed:

- (a) For trustees elected in 2005, their terms shall expire in 2011 and the terms for each of those elected in 2011 shall be six (6) years and thereafter those terms shall be for six (6) years;



- (b) For trustees elected in 2006, their terms shall expire in 2013 and the terms for each of those elected in 2013 shall be six (6) years and thereafter those terms shall be for six (6) years;
- (c) For trustees elected in 2007, their terms shall expire in 2013 and the terms for each of those elected in 2013 shall be six (6) years and thereafter those terms shall be for six (6) years;
- (d) For trustees elected in 2008, their terms shall expire in 2015 and the terms for each of those elected in 2015 shall be six (6) years and thereafter those terms shall be for six (6) years;
- (e) For trustees elected in 2009, their terms shall expire in 2015 and the terms for each of those elected in 2015 shall be six (6) years and thereafter those terms shall be for six (6) years;
- (f) For trustees elected in 2010, their terms shall expire in 2017 and the terms for each of those elected in 2017 shall be six (6) years and thereafter those terms shall be for six (6) years.

#### History.

1965, ch. 173, § 13, p. 340; am. 1995, ch. 118, § 51, p. 417; am. 1995, ch. 154, § 1, p.

631; am. 2009, ch. 341, § 67, p. 993; am. 2011, ch. 11, § 22, p. 24.

#### STATUTORY NOTES

#### Prior Laws.

Former § 39-1330 was repealed. See Prior Laws, § 39-1318.

#### Amendments.

This section was amended by two 1995 acts, ch. 118, § 51, effective July 1, 1995, and ch. 154, § 1, effective July 1, 1995, which appear to be compatible and have been compiled together. However, the amendment by ch. 154, § 1, at the beginning of the first sentence of the third paragraph, substituted "Not less than thirty (30) days nor more than sixty (60) days before any such election," for "Not less than 30 days nor more than 60 days before any such elections," but the amendment by ch. 118, § 51 deleted the above quoted phrase from the sentence.

The 1995 amendment, by ch. 118, § 51, in the first sentence of the first paragraph, substituted "first Tuesday" for "second Tuesday"; in the first sentence of the third paragraph, deleted "Not less than 30 days nor more than 60 days before any such elections" from the beginning of the sentence, substituted "Nominations" for "nominations" and in the middle of the first sentence of the third paragraph, inserted "not later than the sixth Friday preceding the election for which the nomination is made" and added the fourth paragraph.

The 1995 amendment, by ch. 154, § 1, in the first sentence of the first paragraph, substituted "first Tuesday" for "second Tuesday," added the last sentence of the first paragraph, and in the first sentence of the third paragraph, substituted "thirty (30) days" for "30

days" and substituted "sixty (60) days" for "60 days."

The 2009 amendment, by ch. 341, in the first paragraph, twice substituted "the third Tuesday of May" for "the first Tuesday of February" and substituted "in the next odd-numbered calendar year" for "in the second calendar year," and deleted the last sentence, which read: "Prior to January 1, 1997, a board may, by resolution adopted at a regular meeting of the board, designate the fourth Tuesday in May as the election date of the district"; and in the third paragraph, in the second sentence, twice substituted "county clerk" for "board" and for "secretary of the district," and in the third sentence, added "of county commissioners."

The 2011 amendment, by ch. 11, deleted the former first sentence of the third paragraph which read: "Nominations may be filed with the secretary of the board not later than the sixth Friday preceding the election for which the nomination is made, and if a nominee does not withdraw his name before the first publication of the notice of election, his name shall be placed on the ballot"; and added the fifth paragraph followed by paragraphs (a) to (f).

#### Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

Section 27 of S.L. 2011, ch. 11 declared an emergency retroactively to January 1, 2011 and approved February 23, 2011.



**39-1330A, 39-1330B. One nomination — No board election — Write in candidacy — Declaration of intent. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised I.C., § 39-1330A, as added by 1992, ch. 94, § 1, p. 308,

and I.C., § 39-1330B, as added by 1992, ch. 94, § 2, p. 308, were repealed by S.L. 1995, ch. 118, § 112, effective July 1, 1995.

**39-1331. Powers and duties of board.** — For and on behalf of the district the board shall have the following powers:

- a. To have and use a corporate seal.
- b. To have perpetual existence.
- c. To sue and be sued and be a party to suits, actions and proceedings.
- d. To purchase, acquire, dispose of and encumber real and personal property and hold lands, buildings, and all types of property, make such contracts and purchases, acquire and hold such personal property as may be necessary or convenient for its purposes, provided, however, that before any real property of such district may be sold, notice thereof must be given by publication in a legal newspaper of general circulation in the county where such district is situated for three (3) consecutive weekly issues.
- e. In addition to the other means providing revenue for such districts as herein provided, the board shall have the power and authority to levy and collect ad valorem taxes on and against all taxable property within the district, as hereinafter provided.
- f. To borrow money and incur indebtedness and evidence the same by certificates, notes or debentures, and to issue bonds in accordance with the provisions of this act.
- g. To refund any bonded indebtedness of the district without an election, provided, however, that the obligations of the district shall not be increased by any refund of bonded indebtedness. Otherwise the terms and conditions of refunding bonds shall be substantially the same as those of an original issue of bonds.
- h. To have the management, control and supervision of all the business and affairs of the district, and the construction, installation, operation and maintenance of district improvements therein or therefor.
- i. To hire and retain agents, employees, engineers and attorneys.
- j. To have and exercise the power of eminent domain in manner provided by law for the condemnation of private property for public use; to take any property necessary to the exercise of the powers herein granted.
- k. To adopt and amend by-laws not in conflict with the constitution and laws of the state for carrying on business, objects and affairs of the board and of the district.
- l. To have and exercise all rights and powers necessary or incidental to, or implied from the specific powers granted herein, including the charging of reasonable rates for services rendered to patients of said hospital or medical clinic. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this act.

**History.**

1965, ch. 173, § 14, p. 340; am. 1976, ch. 132, § 3, p. 497.

**STATUTORY NOTES****Cross References.**

Power to transfer property to other governmental units, §§ 67-2322 to 67-2325.

**Prior Laws.**

Former § 39-1331 was repealed. See Prior Laws, § 39-1318.

**Compiler's Notes.**

The words "this act" refer to S.L. 1965, ch. 173, which is compiled as §§ 39-1318 to 39-1325, 39-1326 to 39-1330, and 39-1331 to 39-1353.

**39-1332. Annual statement of valuation of taxable property.** — On or before the first Monday in July of each year the county assessor shall deliver to the secretary of each hospital district within the county, a statement showing the aggregate valuation of all the taxable property in such district, and thereafter the district board shall levy the taxes herein provided for.

**History.**

1965, ch. 173, § 15, p. 340.

**STATUTORY NOTES****Prior Laws.**

Former § 39-1332 was repealed. See Prior Laws, § 39-1318.

**39-1333. Levy and collection of taxes — Initial financing.** — To levy and collect taxes, as herein provided, the board shall, in each year, determine the amount of money necessary to be raised by taxation, taking into consideration other sources of revenue of the district, and shall fix a rate of levy, which when levied upon every dollar of assessed valuation of taxable property within the district, and with other revenues, will raise the amount required by the district annually to supply funds to pay for expenses of organization, purchase of necessary equipment, operation, maintenance and upkeep of the works and equipment of the district, provided, however, that said levy shall not exceed six hundredths percent (.06%) of market value for assessment purposes of all taxable property within the district for the purposes hereinbefore set forth, and provided further, that no levy shall be made in excess of four hundredths percent (.04%) of market value for assessment purposes for the purposes set forth in this section, unless the board of trustees of the district shall grant a public hearing, after notice of the time, place and purpose of said hearing has been published in a newspaper of general circulation in the district. Provided, that in the first year after organization, the board of a district may, for the purpose of organization, to finance general preliminary expenses of the district or for any other purpose of the hospital district law, and before making a tax levy, incur an indebtedness not exceeding in the aggregate a sum equal to three tenths percent (.3%) of market value for assessment purposes of all real and personal property within the district. To repay any such organizational indebtedness incurred, on or after March 21, 1985, the board shall have

authority to levy and collect an additional tax not to exceed one tenth percent (.1%) of market value for assessment purposes of all taxable property within the district. Such additional levy shall not be used for any purpose other than repayment of the organizational indebtedness and interest thereon. Such additional levy may be imposed until the organizational indebtedness and interest thereon is paid in full.

#### History.

1965, ch. 173, § 16, p. 340; am. 1985, ch. 243, § 1, p. 574; am. 1988, ch. 177, § 1, p. 310; am. 1996, ch. 208, § 20, p. 658.

### STATUTORY NOTES

#### Prior Laws.

Former § 39-1333 was repealed. See Prior Notes, § 39-1318.

Section 22 of S.L. 1996, ch. 208 declared an emergency and provided that this section should be in effect July 1, 1996. Approved March 12, 1996.

#### Effective Dates.

Section 2 of S.L. 1985, ch. 243 declared an emergency. Approved March 21, 1985.

### JUDICIAL DECISIONS

#### ANALYSIS

Legislative intent.

Limitation on budget requests.

#### Legislative Intent.

This section does not demonstrate an intent by the legislature to let the district accumulate funds for future use. This section states that taxes are to be raised "annually to supply funds." The wording of this section instructs the board of directors of a taxing district to prepare a budget for the coming fiscal year and then the board is allowed to levy a tax if it is necessary to supply funds for the coming fiscal year. It does not allow the placement of the funds in a capital improvement account. *Idaho County Property Owners Ass'n v. Syringa Gen. Hosp. Dist.*, 119 Idaho 309, 805 P.2d 1233 (1991).

to the levies under this section and would not apply to the § 39-1334 levies used for the capital improvement account. The capital improvement account is not part of a district's annual operating budget. *Idaho County Property Owners Ass'n v. Syringa Gen. Hosp. Dist.*, 119 Idaho 309, 805 P.2d 1233 (1991).

A preliminary injunction would have been a proper remedy to prohibit a hospital district from placing levies it obtained pursuant to this section in a capital improvement fund or using the funds to help in renovation. Property owners alleged that the funds were being used in violation of the statute and they showed the clear right they had for relief and the irreparable injury necessary for the issuance of an injunction. *Idaho County Property Owners Ass'n v. Syringa Gen. Hosp. Dist.*, 119 Idaho 309, 805 P.2d 1233 (1991).

#### Limitation on Budget Requests.

Since former § 63-2220 (now repealed) limited the operating budget, it would only apply

**39-1334. Additional tax levies.** — (a) If it becomes necessary and expedient so to do, it shall be lawful for the board to levy additional taxes and collect revenue for the purpose of creating a reserve sinking fund for the purpose of accumulating moneys with which to add new buildings or necessary equipment, and to provide extensions of and betterments to the improvements of the district, and for such purposes may levy an additional tax not to exceed two hundredths of one percent (.02%) of the market value for assessment purposes on all taxable property in the district.

(b) If the board finds it necessary to maintain the solvency of a facility or facilities, the board is authorized to levy additional taxes and collect revenue in excess of the limitations prescribed by section 39-1333, Idaho Code, for the sole purpose of retiring current or past due obligations accruing where



operating expenses for such a facility or facilities have exceeded all available sources of revenue in the fiscal year preceding the anticipated date of levy; provided, that any such additional levy shall be authorized only if approved by two-thirds ( $\frac{2}{3}$ ) of the qualified electors of the district voting at an election called and conducted in the manner specified in sections 39-1339 through 39-1342, Idaho Code.

**History.**

1965, ch. 173, § 17, p. 340; am. 1981, ch. 66, § 1, p. 96; am. 1995, ch. 82, § 16, p. 218; am.

1995, ch. 118, § 52, p. 417; am. 1996, ch. 322, § 35, p. 1029.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-1334 was repealed. See Prior Laws, § 39-1318.

Section 73 of S.L. 1996, ch. 322, provided that the act should be in full force and effect on January 1, 1997.

**Effective Dates.**

Section 2 of S.L. 1981, ch. 66 declared an emergency. Approved March 23, 1981.

**JUDICIAL DECISIONS**

**ANALYSIS**

Discretion to assess levy.  
Improvement account.

**Discretion to Assess Levy.**

This section allows for an accumulation of monies for capital improvements as determined by the board of the taxing district. There are no requirements for a public hearing, or a specific plan of renovation, nor a maximum period allowed for accumulation. The board of directors of the taxing district is allowed complete discretion to assess this levy. Idaho County Property Owners Ass'n v.

Syringa Gen. Hosp. Dist., 119 Idaho 309, 805 P.2d 1233 (1991).

**Improvement Account.**

Since former § 63-2220 (now repealed) limited the operating budget, it would only apply to levies under § 39-1333 and would not apply to the levies under this section used for the capital improvement account. Idaho County Property Owners Ass'n v. Syringa Gen. Hosp. Dist., 119 Idaho 309, 805 P.2d 1233 (1991).

**39-1335. Tax levy to pay interest on bonds and other obligations.**

— In addition to the taxes hereinbefore provided for, the said board shall have the authority to levy and collect taxes as herein provided in each year sufficient to promptly pay in full, when due, all interest on the principal of bond and other obligations of the district authorized as provided by sections 39-1338 and 39-1339[, Idaho Code,] of this act.

**History.**

1965, ch. 173, § 18, p. 340.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-1335 was repealed. See Prior Laws, § 39-1318.

**Compiler's Notes.**

The bracketed insertion was added by the

compiler to conform to the statutory citation style.

The words "this act" refer to S.L. 1965, ch. 173, which is compiled as §§ 39-1318 to 39-1325, 39-1326 to 39-1330, and 39-1331 to 39-1353.

**39-1336. Maturing indebtedness a consideration in annual levies.** — The board in certifying annual levies as herein provided, shall take into account maturing indebtedness for the ensuing year as provided in its contracts, maturing bonds, and interest on bonds and deficiencies and defaults of prior years, and shall make ample provision for the payment thereof.

**History.**

1965, ch. 173, § 19, p. 340.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-1336 was repealed. See Prior Laws, § 39-1318.

**39-1337. Tax rate — Certification — Levy and collection.** — The board shall, on or before the first day of September of each year, certify to the board of commissioners the rate so fixed with corrections that at the time and in the manner required by law for levying taxes for county purposes such board of county commissioners shall levy such taxes upon the assessed valuation of all taxable property within the district, in addition to such other taxes as may be levied by such board of county commissioners at the rate so fixed and determined. It shall be the duty of the body having authority to levy taxes within each county to levy the taxes provided in this act, and it shall be the duty of all officials charged with the duty of collecting taxes to collect such taxes at the time and in the manner and form and with like interest and penalties as other taxes are collected, and when collected, to pay the same to the district ordering its levy and collection, and the payment of such collection shall be made monthly to the treasurer of the district and paid into the depository thereof, to the credit of the district.

**History.**

1965, ch. 173, § 20, p. 340; am. 1971, ch. 13, § 3, p. 24.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-1337 was repealed. See Prior Laws, § 39-1318.

**Compiler's Notes.**

The words "this act" refer to S.L. 1965, ch. 173, which is compiled as §§ 39-1318 to 39-1325, 39-1326 to 39-1330, and 39-1331 to 39-1353.

Section 2 of S.L. 1970, ch. 133, according to both the title and the law, purported to amend § 39-1337 of the Idaho Code. It seemed, however, that the amendment was of § 39-1337

which had been repealed. To correct this situation S.L. 1971, ch. 13 was adopted.

Section 1 of S.L. 1971, ch. 13 read: "Because of an apparent oversight in attempting to amend certain sections of the Idaho Code by Sections 2 and 3, Chapter 133, Laws of 1970, and to relieve any possible legal complications which may arise from such oversight, the following amendatory act is deemed necessary."

Section 2 of S.L. 1971, ch. 13 repealed S.L. 1970, ch. 133, §§ 2, 3, which purported to amend §§ 39-1337 and 39-1373 of the Code.

**39-1338. Bond issues authorized — Form and terms.** — To carry out the purposes of this act and to pay the necessary expenses of the district,

the board is hereby authorized to issue negotiable coupon bonds of the district. Bonds shall bear interest payable semiannually, and shall be due and payable serially either annually or semiannually, commencing not later than three (3) years from the date of issuance. The form and terms of said bonds, including provisions for their payment and redemption, shall be determined by the board. If the board so determines, such bonds may be redeemable prior to maturity, upon payment of a premium not exceeding three per cent (3%) of the net principal thereof. Said bonds shall be executed in the name of, and on behalf of, the district and signed by the chairman of the board with the seal of the district affixed thereto, and attested by the secretary of the board. Said bonds shall be in such denominations as the board shall determine, and the bonds and coupons thereto attached shall be payable to bearer. Interest coupons shall bear the original or facsimile signature of the chairman of the board. In all other respects, said bonds shall be issued, sold and paid in accordance with the provisions of chapter 2, title 57, Idaho Code, known as the "Municipal Bond Law" of the state of Idaho.

#### History.

1965, ch. 173, § 21, p. 340; am. 1971, ch. 12, § 1, p. 23; am. 1981, ch. 55, § 1, p. 84.

### STATUTORY NOTES

#### Cross References.

Municipal Bond Law, § 57-201 et seq.

#### Prior Laws.

Former § 39-1338 was repealed. See Prior Laws, § 39-1318.

#### Compiler's Notes.

S.L. 1970, ch. 133, § 2, purported to amend § 39-1337. However, the amendment copied the language of the section of that number which had been repealed by S.L. 1965, ch. 173, § 37. The subject matter of such repealed section now appears in this section. The purported amendment of § 39-1337 read: "To carry out the purposes of this act and to pay the necessary expenses of the district, the board is hereby authorized to issue negotiable coupon bonds of the district. Bonds shall bear interest, payable semi-annually, and shall be due and payable serially either annually or semi-annually, commencing not later than three years and extending not more than twenty years from date. The form and terms of said bonds, including provisions for their payment and redemption, shall be determined by the board. If the board so deter-

mines, such bonds may be redeemable prior to maturity, upon payment of a premium not exceeding three per cent of the net principal thereof. Said bonds shall be executed in the name of, and on behalf of, the district and signed by the chairman of the board with the seal of the district affixed thereto, and attested by the secretary of the board. Said bonds shall be in such denominations as the board shall determine, and the bonds and coupons thereto attached, shall be payable to bearer. Interest coupons shall bear the original for (or) facsimile signature of the chairman of the board. In all other respects, said bonds shall be issued, sold and paid in accordance with the provisions of the Municipal Bond Law of the state of Idaho." Such section has been repealed by S.L. 1971, ch. 13.

The words "this act" refer to S.L. 1965, ch. 173, which is compiled as §§ 39-1318 to 39-1325, 39-1326 to 39-1330, and 39-1331 to 39-1353.

#### Effective Dates.

Section 2 of S.L. 1971, ch. 12 declared an emergency. Approved February 5, 1971.

**39-1339. Creation of indebtedness for works, improvements or equipment — Election on proposed indebtedness — Indebtedness or liability without election.** — (1) Whenever the board of the hospital district shall by resolution determine that it is in the interest of said district and in the public interest or necessity to purchase, contract, lease or



construct or otherwise acquire facilities, equipment, technology and real property for health care operations or make any contract with the United States or other persons or corporations, public or private, municipalities or governmental subdivisions to carry out the said public works, acquisitions, improvements, objects or purposes of said district requiring the creation of an indebtedness payable out of taxes of five hundred thousand dollars (\$500,000) or more, and in any event when the indebtedness will exceed the income and revenue provided for the year, the board shall order the submission of the proposition of issuing such obligations or bonds or creating other indebtedness payable out of taxes to the qualified electors of the district at an election held, subject to the provisions of section 34-106, Idaho Code, for that purpose. The declaration of public interest or necessity, herein required, and the provision for the holding of such election may be included within one (1) and the same resolution, which resolution, in addition to such declaration of public interest or necessity shall recite the objects and purposes for which the indebtedness is proposed to be incurred, the estimated costs of the works, improvements, or medical or business equipment, as the case may be, the amount of principal of the indebtedness to be incurred therefor, and the maximum rate of interest to be paid on such indebtedness. Such resolutions shall also fix the date upon which such election shall be held, and the manner of holding the same in accordance with the provisions of title 34, Idaho Code, and the method of voting for or against the incurring of the proposed indebtedness; such resolution shall designate the polling place or places and the county clerk shall appoint judges, provided, however, that no district shall issue or have outstanding its coupon bonds in excess of two percent (2%) of the market value for assessment purposes of the real and personal property within the said district, according to the assessment of the year preceding any such issuance of such evidence of indebtedness for any or all of the propositions specified in this election, provided, however, that such bonds shall not be issued, nor shall any indebtedness be incurred, at any time that there shall be a bond issue outstanding and unpaid for the construction, acquisition or maintenance of a county hospital in the county in which such district is organized.

(2) No election shall be required for any lease or other transaction entered into between the hospital district and the Idaho health facilities authority. Notwithstanding any other provision, the hospital district shall be entitled to enter into a lease or other transaction regardless of the amount involved with the Idaho health facilities authority upon determination by the board of the hospital district that it is in the interest of the hospital district and best interests of the public to enter into such lease or other transaction.

(3) Notwithstanding subsection (1) or (2) of this section and provided that no property tax revenues shall be used for payment of indebtedness authorized by this subsection, district hospitals, ancillary to their operations and in furtherance of health care needs in their service areas, may incur indebtedness or liability without an election to purchase, contract, lease or construct or otherwise acquire facilities, equipment, technology and real property for health care operations.

**History.**

1965, ch. 173, § 22, p. 340; am. 1971, ch. 25, § 4, p. 61; am. 1976, ch. 132, § 4, p. 497; am. 1977, ch. 60, § 1, p. 115; am. 1980, ch. 350, § 17, p. 887; am. 1983, ch. 133, § 1, p. 328;

am. 1990, ch. 354, § 2, p. 956; am. 1991, ch. 73, § 1, p. 176; am. 1995, ch. 118, § 53, p. 417; am. 2009, ch. 341, § 68, p. 993; am. 2011, ch. 185, § 1, p. 535.

**STATUTORY NOTES**

**Cross References.**

Health facilities authority, § 39-1441 et seq.

**Prior Laws.**

Former § 39-1339 was repealed. See Prior Laws, § 39-1318.

**Amendments.**

The 2009 amendment, by ch. 341, rewrote the last sentence to the extent that a detailed comparison is impracticable.

The 2011 amendment, by ch. 185, in the section heading, added "Indebtedness or lia-

bility without election"; rewrote and designated the existing provisions of the section as subsection (1) and added subsections (2) and (3).

**Effective Dates.**

Section 3 of S.L. 1977, ch. 60 declared an emergency. Approved March 15, 1977.

Section 3 of S.L. 1990, ch. 354 declared an emergency. Approved April 10, 1990.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

**39-1340. Notices of election on proposed indebtedness.** — When such election is ordered to be held, subject to the provisions of section 34-106, Idaho Code, the board shall direct the county clerk as provided in section 34-1406, Idaho Code, to give notice by publication once not less than twelve (12) days prior to the election and a second time not less than five (5) days prior to the election published in one (1) or more newspapers within the district, if a newspaper is published therein. Said notices shall recite the action of the board in deciding to bond the district, the purpose thereof and the amount of the bonds supposed to be issued, the estimated costs of the works or improvements as the case may be, the amount of principal of the indebtedness to be incurred therefor, and the maximum rate of interest to be paid on such indebtedness, and shall also specify the date of the election and the time during which the polls shall be open. Notices shall also list the polling places.

**History.**

1965, ch. 173, § 23, p. 340; am. 1995, ch.

118, § 54, p. 417; am. 2009, ch. 341, § 69, p. 993.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-1340 was repealed. See Prior Laws, § 39-1318.

**Amendments.**

The 2009 amendment, by ch. 341, in the first sentence, inserted "direct the county clerk as provided in section 34-1406, Idaho

Code, to"; and, in the last sentence, substituted "list the polling places" for "name the place holding the election."

**Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

**39-1341. Conduct of election for proposed indebtedness.** — The county clerk shall conduct the election in a manner prescribed by law in title 34, Idaho Code. The returns thereof shall be canvassed and the results thereof shall be declared by the board of county commissioners.

**History.**

1965, ch. 173, § 24, p. 340; am. 2009, ch. 341, § 70, p. 993.

**STATUTORY NOTES****Prior Laws.**

Former § 39-1341 was repealed. See Prior Laws, § 39-1318.

**Amendments.**

The 2009 amendment, by ch. 341, rewrote the section to the extent that a detailed comparison is impracticable.

**Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

**39-1342. Indebtedness incurred upon favorable vote — Resubmission of proposition not received favorably.** — In the event that it shall appear from said returns that two-thirds (2/3) of the qualified electors of the district voting at such election shall have voted in favor of such proposition or any proposition submitted hereunder at such election, the district shall thereupon be authorized to incur such indebtedness or obligations, enter into such contract or issue and sell bonds of the district, as the case may be, all for the purpose or purposes, and object or objects provided for in the propositions submitted hereunder and in the resolution therefor and in the amount so provided at a rate of interest not exceeding the rate of interest recited in such resolution. The submission of the proposition of incurring such obligation or bonded or other indebtedness at such an election shall not prevent or prohibit submission of the same, or other propositions, at subsequent election or elections called for such purpose at any time, held subject to the provisions of section 34-106, Idaho Code.

**History.**

1965, ch. 173, § 25, p. 340; am. 1971, ch. 25, § 5, p. 61; am. 1995, ch. 118, § 55, p. 417.

**STATUTORY NOTES****Prior Laws.**

Former § 39-1342 was repealed. See Prior Laws, § 39-1318.

**Effective Dates.**

Section 9 of S.L. 1971, ch. 25 declared an emergency. Approved February 16, 1971.

**39-1343. Officials and sureties liable on bond.** — All county officers entrusted with the assessment, collection, paying over or custody of taxes of any hospital district within the county, and their sureties, shall be liable upon their official bonds for the faithful performance of their duties in the assessment, collection and safe keeping of such hospital district taxes.

**History.**

1965, ch. 173, § 26, p. 340.



## STATUTORY NOTES

**Prior Laws.**

Former § 39-1343 was repealed. See Prior Laws, § 39-1318.

**39-1344. Taxes levied a lien — Collection.** — All taxes levied by hospital districts, shall become a lien upon the property so assessed from the date of such assessment, and shall be due and payable at the time state and county taxes are due and payable and in all respects are to be collected in the same way, except that the assessor must keep a separate list or assessment roll therefor.

**History.**

1965, ch. 173, § 27, p. 340.

## STATUTORY NOTES

**Prior Laws.**

Former § 39-1344 was repealed. See Prior Laws, § 39-1318.

**39-1345. Due and delinquent dates of taxes assessed.** — All hospital district taxes levied and assessed under the provisions of this act shall become due and delinquent and shall attach to and become a lien on the real property assessed at the same time as state and county taxes. All the provisions of the Idaho Code governing and assessing and collecting state and county taxes are hereby made applicable to the assessment and collection of said hospital district taxes wherever the same are not inconsistent with the provisions of this act.

**History.**

1965, ch. 173, § 28, p. 340.

## STATUTORY NOTES

**Prior Laws.**

Former § 39-1345 was repealed. See Prior Laws, § 39-1318.

173, which is compiled as §§ 39-1318 to 39-1325, 39-1326 to 39-1330, and 39-1331 to 39-1353.

**Compiler's Notes.**

The words "this act" refer to S.L. 1965, ch.

**39-1346. Treasurer of hospital district — Duties.** — It is hereby made the duty of the treasurer of the hospital district to keep account with such district, to place to the credit of such district all moneys received by him from the collector of taxes, or from any other officer charged with the collection of taxes as the proceeds of taxes levied by the hospital board or from any other sources and of all other moneys belonging to such district and to pay over all moneys belonging to the district by legally drawn warrants or orders of the district officer entitled to draw the same.

**History.**

1965, ch. 173, § 29, p. 340.

## STATUTORY NOTES

**Prior Laws.**

Former § 39-1346 was repealed. See Prior Laws, § 39-1318.

**39-1347. Warrants and drafts — Payment.** — The secretary shall countersign all drafts and warrants on the district treasury, and no payment of district funds shall be made except on draft or warrant countersigned by him. He shall not countersign any such draft or warrant until he has found that payment has been legally authorized; that the money therefor has been duly appropriated and that such appropriation has not been exhausted.

Such warrants shall be drawn by, and countersigned upon the order of the president of the hospital board, or, in his absence, the other member of the board; but no drafts or warrants shall be drawn, except upon the appropriation of the board, nor in excess of the moneys actually in the district treasury; except that warrants may be issued in anticipation of the collection of taxes, but not in excess of seventy-five per cent (75%) of the amount of the levy therefor, nor shall any warrants be issued nor indebtedness incurred in anticipation of such levy.

When a warrant is presented for payment, if there is money in the treasury for the purpose, the treasurer must pay the same and write on the face thereof, "paid", the date of payment and sign his name thereto.

**History.**

1965, ch. 173, § 30, p. 340.

## STATUTORY NOTES

**Prior Laws.**

Former § 39-1347 was repealed. See Prior Laws, § 39-1318.

**39-1348. Warrants — Inability to pay — Indorsement.** — When any warrant is presented to the district treasurer for payment, and the same is not paid for want of funds, the treasurer must endorse on the back of said warrant, "not paid for want of funds," and shall write thereon the day of presentation and sign his name thereto, and warrants so endorsed by the treasurer shall draw interest at a rate established by the board of the hospital district from the date of endorsement until paid.

**History.**

1965, ch. 173, § 31, p. 340; am. 1980, ch. 61, § 6, p. 118.

## STATUTORY NOTES

**Prior Laws.**

Former § 39-1348 was repealed. See Prior Laws, § 39-1318.

**Effective Dates.**

Section 14 of S.L. 1980, ch. 61 declared an emergency. Approved March 11, 1980.

**39-1349. Bulletin board — Notices posted for presentation of district warrants.** — The district treasurer shall provide himself, at the expense of the district, with a bulletin board, across the top of which shall be printed or inscribed the words "..... hospital district warrant bulletin." It shall be the duty of the treasurer to keep such bulletin board conspicuously, securely and permanently in place in his office, and thereupon to place in a manner which will insure continuous notice of not less than sixty (60) days, all notices issued by him, whether written or printed, calling for the presentation of district warrants for payment.

**History.**

1965, ch. 173, § 32, p. 340.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-1349 was repealed. See Prior Laws, § 39-1318.

**39-1350. Notice warrants will be paid on presentation.** — Whenever there is an amount to the credit of the district fund, as shown by the books of the treasurer, sufficient to pay the warrant or warrants next entitled to payment therefrom, the treasurer shall immediately place in his office, as provided in the preceding section, a notice that such warrant or warrants will be paid on presentation, stating therein the number and series of any such warrants; and the treasurer shall thereupon send, by mail, to the record holder of such warrant, in case such holder shall have left with the treasurer his address for that purpose, notice that such warrant will be paid on presentation.

**History.**

1965, ch. 173, § 33, p. 340.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-1350 was repealed. See Prior Laws, § 39-1318.

**39-1351. Interest on warrants — Cessation thirty days from posting notice.** — Interest on any warrant shall cease on the expiration of thirty (30) days from the time of posting of the notice provided for in the last preceding section; and for all sums which may be paid by the treasurer, as interest on any warrant or warrants, after the expiration of thirty (30) days from the earliest date at which there were sufficient funds with which to have called and paid the same, such treasurer and his sureties shall be liable upon his official bond.

**History.**

1965, ch. 173, § 34, p. 340.



## STATUTORY NOTES

**Prior Laws.**

Former § 39-1351 was repealed. See Prior Laws, § 39-1318.

**39-1352. Notation of interest amount on warrant.** — When the treasurer pays any warrant on which any interest is due, he must note on the warrant the amount of interest paid thereon and enter on his account the amount of such interest distinct from the principal.

**History.**

1965, ch. 173, § 35, p. 340.

## STATUTORY NOTES

**Prior Laws.**

Former § 39-1352 was repealed. See Prior Laws, § 39-1318.

**39-1353. Power to issue and sell tax anticipation notes or bonds.** — Hospital districts created and existing under this chapter shall have the further power to issue and sell tax anticipation notes or bonds in the manner, and for the purposes and to the extent authorized by chapter 31 of title 63 of Idaho Code.

**History.**

1965, ch. 173, § 36, p. 340.

## STATUTORY NOTES

**Prior Laws.**

Former § 39-1353 was repealed. See Prior Laws, § 39-1318.

**Compiler's Notes.**

Section 37 of S.L. 1965, ch. 173 repealed all acts or parts of acts in conflict, and specifically repealed S.L. 1953, ch. 121; S.L. 1955, ch. 184; S.L. 1959, ch. 70; S.L. 1961, ch. 59.

Section 38 of S.L. 1965, ch. 173 read: "If it should be judicially determined that any part of this act is invalid or unenforceable, such determination shall not affect the remaining parts, it being the intention to make this act and all of its parts severable."

Section 40 of S.L. 1965, ch. 173 read: "All hospital districts heretofore formed under the provisions of the statutes repealed by this act and proceedings of whatsoever nature taken by such hospital districts thereunder shall not be affected by such repeals. Proceedings hereinafter initiated by such existing hospital districts shall be in compliance with the terms of the act."

**Effective Dates.**

Section 39 of S.L. 1965, ch. 173 declared an emergency. Approved March 18, 1965.

**39-1353a. Practice of medicine not authorized.** — Anything to the contrary hereinabove notwithstanding, this act shall not be construed to permit or authorize any hospital district or hospital therein in the state of Idaho directly or indirectly to engage in the practice of medicine as defined in chapter 18, title 54, Idaho Code, which privilege is reserved exclusively to persons licensed for that purpose pursuant to chapter 18, title 54, Idaho Code.

**History.**

1976, ch. 132, § 5, p. 497.

**STATUTORY NOTES****Compiler's Notes.**

The term "this act" refers to S.L. 1976, ch. 132, which is codified a §§ 39-318, 39-319, 39-1331, 39-1339, and this section.

**Effective Dates.**

Section 6 of S.L. 1976, ch. 132 declared an emergency. Approved March 17, 1976.

**39-1354. Annexation of territory not having a tax supported hospital — Petitions and signatures — Election.** — (1) Any area contiguous to a hospital district which does not support another tax supported hospital may become annexed to the district by petition and election.

(2) A petition for annexation shall comply with the requirements of section 39-1320, Idaho Code, in the area seeking to become annexed to the hospital district. A true copy of the petition shall be transmitted to the board of trustees of the district, and to the board of county commissioners in each county affected. The board of trustees of the hospital district may approve or disapprove such petition, and shall give notice of its decision to the board of county commissioners in each county affected.

(3) When it has received notice of approval of the board of trustees of the district, the board of county commissioners in the county or counties in which the petition arose shall enter its order calling for an election on the question. The election shall be held in the area proposed to be annexed. Notice of the election shall be given, the election shall be conducted, and the returns thereof canvassed as provided in sections 39-1323, 39-1324 and 39-1325, Idaho Code. The ballot shall bear the question: "Shall .... become part of the .... hospital district .... Yes" and "Shall .... become part of the .... hospital district .... No" each followed by a box in which the voter may express his choice by marking a cross. The proposal shall be deemed approved only if the majority of the votes cast is in the affirmative.

(4) If the proposal has been approved at the election, the board of county commissioners in each county in which the district is located following annexation shall enter its order amending the boundaries of the district, and a copy shall be transmitted to the board of trustees of the hospital district. Annexation shall be effective as of the date of the last such order entered.

(5) Such other notices as may be required by law shall be filed by the board of trustees of the hospital district with the state tax commission within ten (10) days of the effective date of the change, including a legal description and map of the altered boundaries.

(6) Addition of new territory to an existing hospital district shall not be considered an initial establishment. The existing board of trustees shall continue to serve for the term for which elected. When a vacancy occurs, appointment shall be made as provided in section 39-1326, Idaho Code.

**History.**

I.C., § 39-1354, as added by 1993, ch. 137,  
§ 3, p. 337.

**STATUTORY NOTES****Cross References.**

State tax commission, § 63-101.

**Prior Laws.**

Former §§ 39-1354 to 39-1356, which comprised S.L. 1955, ch. 184, §§ 1 to 3, were repealed by S.L. 1965, ch. 173, § 37.

**Compiler's Notes.**

The reference to § 39-1326, Idaho Code, at the end of subsection (6) is incorrect. Appointments to fill vacancies are governed by the terms of § 39-1329, Idaho Code.

**39-1355. Existing tax supported hospitals may consolidate. —**  
The ownership and operation of any municipal, city/county, county, district, or tax supported community hospital or medical clinic may be consolidated with an established hospital district by majority vote of the qualified electors of the established hospital district and of the political subdivision having jurisdiction over such other tax supported hospital according to procedure set forth in section 39-1354, Idaho Code. A true copy of the petition and the established hospital district board's notice of approval or disapproval shall be sent to the governing body of the political subdivision having jurisdiction over a petitioning hospital. A true copy of that petition shall, at the same time, be sent to the governing body of the nonpetitioning hospital. When the notice carries the approval of the boards, or other governing bodies of both hospitals, that governing body shall conduct the election and give notice of the results to the hospital district board and the relevant boards of county commissioners as provided in section 39-1354, Idaho Code. As a result of any such consolidation, the boundaries of the hospital district remaining after consolidation shall be expanded to include the political subdivision which previously had jurisdiction over the consolidated hospital or medical clinic.

**History.**

I.C., § 39-1355, as added by 1993, ch. 137,  
§ 4, p. 337.

**STATUTORY NOTES****Prior Laws.**

Former § 39-1355 was repealed. See Prior Laws, § 39-3154.

**39-1356. Equalization of levy between consolidating hospitals. —**  
(1) When two (2) districts' hospitals or medical clinics have agreed to consolidate, the tax levies of the two (2) hospitals will be equalized in the following manner: the certified budget figures from ad valorem taxes of the district will be added together. The resulting figure will provide the base budget amount for the new consolidated district. In any such consolidation, the existing bonded debt of any district or districts shall not become the obligation of the proposed consolidated hospital district. The debt shall remain an obligation of the property which incurred the indebtedness.



**History.**

I.C., § 39-1356, as added by 1993, ch. 137,  
§ 5, p. 337.

**STATUTORY NOTES****Prior Laws.**

Former § 39-1356 was repealed. See Prior  
Laws, § 39-1354.

**Compiler's Notes.**

This section was enacted with a subsection  
(1), but no (2).

**39-1356A. Hospital districts in more than one county. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised I.C., 39-1356A as added by 1961, ch. 59, § 1 p. 87,  
was repealed by S.L. 1965, ch. 173, § 37.

**39-1357. Adjustment of boundary lines or consolidation of hospital districts.** — When there are two (2) or more hospital districts, which have at least one (1) common boundary, the boards of trustees of the hospital districts, meeting together, may determine that it is in the best interest of the qualified electors and prospective hospital patients that the boundary lines be adjusted or that the districts be consolidated, as herein provided.

The boards of trustees shall jointly prepare a petition describing the boundaries of the existing hospital districts, the names of the existing hospital districts, and praying for the reorganization of the territory therein described as one (1) or more hospital districts to be known as the “.... hospital district or districts” and with boundaries as set forth in the petition.

The petition shall be signed by the chairpersons of the hospital boards upon majority approval of the respective boards involved in the boundary adjustment or consolidation.

The petition shall be forwarded to the clerk of the board of county commissioners in each of the counties affected who shall verify the signatures, and shall file the petition. Thereupon, the board of county commissioners in each of the counties affected shall proceed with the hearing and resolution as outlined in sections 39-1320, 39-1321 and 39-1322, Idaho Code, and an election in the manner required for the establishment of a hospital district.

In the order granting the petition and adjusting the boundaries or establishing consolidation, the board of county commissioners in all counties affected shall certify the new boundaries and the name of the district or districts.

A copy of the order shall be transmitted to the board of trustees of the hospital districts involved.

Such other notices as may be required by law shall be filed by the board of trustees of the district, including a legal description and map of altered boundaries to be filed with the state tax commission within ten (10) days of the effective date of the change.

Following boundary adjustment, the board of county commissioners within five (5) days shall take action to reaffirm members of the board of trustees, or to appoint members of the board or boards, who shall be chosen

from the members of the boards initiating the boundary adjustment to the extent possible. These trustees shall serve until the next annual election of trustees or until their successors are elected and qualified as provided in section 39-1326, Idaho Code. The board or boards of trustees shall be sworn by a member of the board of county commissioners.

Following a consolidation, the board of county commissioners within five (5) days shall appoint the members of the first board of trustees, who shall be chosen from the members of the boards of the consolidated districts and who shall serve until the next annual election of trustees or until their successors are elected and qualified. The board shall be sworn by a member of the board of county commissioners.

**History.**

I.C., § 39-1357, as added by 1993, ch. 137,  
§ 6, p. 337.

**STATUTORY NOTES****Cross References.**

State tax commission, § 63-101.

1955, § 4 was repealed by S.L. 1965, ch. 173,  
§ 37.

**Prior Laws.**

Former § 39-1357, which comprised S.L.

**39-1358 — 39-1389. Hospital districts established — Procedure.  
[Repealed.]****STATUTORY NOTES****Compiler's Notes.**

These sections, which comprised S.L. 1985, §§ 5 to 35, were repealed by S.L. 1965, ch. 173, § 37.

S.L. 1970, ch. 133, § 3, purported to amend § 39-1373, which had been repealed by S.L. 1965, ch. 173, § 37. The amended section read: "To carry out the purposes of this act and to pay the necessary expenses of the district, the board is hereby authorized to issue negotiable coupon bonds of the district. Bonds shall bear interest, payable semi-annually, and shall be due and payable serially either annually or semi-annually, commencing not later than three (3) years and extending not more than twenty (20) years from date. The form and terms of said bonds, including provisions for their payment and

redemption, shall be determined by the board. If the board so determines, such bonds may be redeemable prior to maturity, upon payment of a premium not exceeding three per cent (3%) of the net principal thereof. Said bonds shall be executed in the name of, and on behalf of, the district and signed by the chairman of the board with the seal of the district affixed thereto, and attested by the secretary of the board. Said bonds shall be in such denominations as the board shall determine, and the bonds and coupons thereto attached shall be payable to bearer. Interest coupons shall bear the original or facsimile signature of the chairman of the board. In all other respects, said bonds shall be issued, sold and paid in accordance with the provisions of the Municipal Bond Law of the state of Idaho."

**39-1390. Reports to law enforcement agencies of certain types of injuries.** — (1) As soon as treatment permits, any person operating a hospital or other medical treatment facility, or any physician, resident on a hospital staff, intern, physician assistant, nurse or emergency medical technician shall notify the local law enforcement agency of that jurisdiction upon the treatment of or request for treatment of a person when the reporting person has reason to believe that the person treated or requesting treatment has received:

- (a) Any injury inflicted by means of a firearm; or
  - (b) Any injury indicating that the person may be a victim of a criminal offense.
- (2) The report provided to the law enforcement agency pursuant to subsection (1) of this section shall include the name and address of the injured person, the character and extent of the person's injuries, and the medical basis for making the report.
- (3) Any person operating a medical facility, or any physician, resident on a hospital staff, intern, physician assistant, nurse or emergency medical technician shall be held harmless from any civil liability for his reasonable compliance with the provisions of this section.

**History.**

I.C., § 39-1390, as added by 1991, ch. 167,  
§ 1, p. 407; am. 1995, ch. 169, § 1, p. 651.

**STATUTORY NOTES****Prior Laws.**

1959, ch. 70, § 3, p. 151, was repealed by S.L.  
Former § 39-1390, which comprised S.L. 1965, ch. 173, § 37.

**39-1391. Emergency treatment without admission — Liability. —**  
Any hospital licensed in this state may provide to any person appearing or represented to be seriously sick or injured, without admission of such person to the hospital and without the immediate presence of a licensed physician and surgeon, such emergency treatment and care or, if such hospital does not maintain and operate an emergency department, such first aid services and care as may be indicated, considering the facilities and personnel available. Neither any hospital nor its agents or employees providing such services, pursuant to standby orders duly promulgated by the medical staff of said hospital, shall be deemed, by so doing, to be engaged in the practice of medicine, nor shall any such hospital, its agents or employees, or any physician be held liable in any civil action arising out of the furnishing of such services and care, in the absence of gross negligence under the existing circumstances.

**History.**

1973, ch. 82, § 1, p. 130.

**39-1391a. Emergency treatment not to constitute admission. —**  
The furnishing of emergency or first aid services and care as permitted by section 39-1391[, Idaho Code,] shall not in and of itself constitute admission to such hospital of the person receiving such services and care, nor shall such hospital, its employees, or any physician be subject to civil suit for abandonment or failure to provide care if, upon examination by a licensed physician and surgeon, it is determined by such physician, in the good faith exercise of his professional judgment, that the admission of any person receiving or presented for such services and care is not advisable or required.



**History.**

1973, ch. 82, § 2, p. 130.

**STATUTORY NOTES****Compiler's Notes.**

The bracketed insertion was added by the

compiler to conform to the statutory citation style.

**39-1391b. Emergency treatment by hospital not required — Discrimination prohibited.** — Nothing in this act shall be deemed to require any hospital to provide facilities or personnel for the furnishing of such emergency or first aid services and care or to furnish such services and care, without admission by a licensed physician and surgeon, to any person who may request the same; provided, however, that emergency or first aid services and care shall not be refused to any person by reason of race, creed, national origin or financial ability to pay therefor.

**History.**

1973, ch. 82, § 3, p. 130.

**STATUTORY NOTES****Compiler's Notes.**

The words "this act" refer to S.L. 1973, ch.

82, which is compiled as §§ 39-1391 to 39-1391c.

**JUDICIAL DECISIONS**

**Cited in:** St. Alphonsus Regional Medical Ctr., Ltd. v. Twin Falls County, 112 Idaho 309, 732 P.2d 278 (1987).

**39-1391c. Immunity from civil liability.** — Any licensed physician and surgeon shall be conclusively presumed to be qualified to undertake and to furnish any emergency medical or surgical care and treatment, regardless of the specialty training or skills which might otherwise be preferred for care and treatment of the particular patient, whenever, in the good faith judgment of such physician and surgeon, the condition and best interests of the patient require such physician and surgeon to undertake such care and treatment, and, in the absence of gross negligence under the existing circumstances, no physician so proceeding nor any hospital where such care and treatment is provided shall be held liable in any civil action arising out of the furnishing of such emergency care and treatment.

Nothing in this act shall be deemed to require any physician to undertake to or to furnish medical care and treatment, whether on an emergency basis or otherwise, to any person requesting or presented for such care and treatment, nor shall any such physician be held liable in any civil action by reason of his refraining from the furnishing of such care and treatment or referring the same to a specialist or other physician believed by him to be more uniquely or appropriately experienced and qualified. Neither shall any physician responding to any request for emergency care be held liable in any civil action by reason of failure to so respond with any greater promptness than may be reasonably required or expected, under the existing circum-

stances, of physicians and surgeons practicing in the particular community where such care and treatment is to be furnished.

**History.**

1973, ch. 82, § 4, p. 130.

**STATUTORY NOTES**

**Compiler's Notes.**

The words "this act" refer to S.L. 1973, ch.

82, which is compiled as §§ 39-1391 to 39-1391c.

**JUDICIAL DECISIONS**

**ANALYSIS**

Application.

Legislative intent.

Liability of physician.

Nature of relationship.

**Application.**

This section applies only to emergency or first aid situations; it does not apply when an ordinary physician/patient relationship has been established. *Eby ex rel. Eby v. Newcombe*, 116 Idaho 838, 780 P.2d 589 (1989).

**Legislative Intent.**

The legislature meant for the phrase "or otherwise", as used in the second paragraph of this section, to refer to "first aid services"; there is no indication based upon a review of the statutory heading that the legislature utilized in referring to this section, that the legislature intended for that phrase to refer to treatment rendered under an ordinary doctor/patient relationship, and such an interpretation of this section comports with §§ 39-1391, 39-1391a and 39-1391b, wherein similar protection is given to hospitals rendering emergency treatment or first aid services. *Eby ex*

*rel. Eby v. Newcombe*, 116 Idaho 838, 780 P.2d 589 (1989).

**Liability of Physician.**

This act was meant to provide that a physician rendering emergency treatment or first aid services shall not be subject to liability therefor in the absence of gross negligence. *Eby ex rel. Eby v. Newcombe*, 116 Idaho 838, 780 P.2d 589 (1989).

**Nature of Relationship.**

Where the pleadings, depositions, admissions and affidavits before the trial court demonstrated a genuine issue as to the material fact concerning whether a physician saw a patient pursuant to an ordinary physician/patient relationship or whether he only rendered emergency treatment or first aid services to that patient, the trial court erred in granting the physician's motion for summary judgment. *Eby ex rel. Eby v. Newcombe*, 116 Idaho 838, 780 P.2d 589 (1989).

**RESEARCH REFERENCES**

**Am. Jur.** — 40 Am. Jur. 2d, Hospitals and Asylums, § 15.

**39-1392. Statement of policy.** — To encourage research, discipline and medical study by certain health care organizations for the purposes of reducing morbidity and mortality, enforcing and improving the standards of medical practice in the state of Idaho, certain records of such health care organizations shall be confidential and privileged as set forth in this chapter.

**History.**

1973, ch. 265, § 1, p. 545; am. 1997, ch. 171, § 1, p. 485.

## JUDICIAL DECISIONS

## ANALYSIS

Hospital tumor board.  
Legislative intent.

**Hospital Tumor Board.**

Applying privilege to activity of hospital tumor board in discussing current care and treatment of a cancer patient and making a recommendation for surgery was not inconsistent with the purposes set forth in the statute, since dealing with actual current patient cases, rather than hypothetical or former case histories, could result in immediate, pragmatic benefits to patients from such medical studies and educational processes; the board's activities in this instance came within the scope of §§ 39-1392 to 39-1392e. *Murphy v. Wood*, 105 Idaho 180, 667 P.2d 859 (Ct. App. 1983).

**Legislative Intent.**

The legislature intended to establish a broad privilege for the records and proceedings of hospital medical staff committees which extends to all discussions and proceedings by hospital staff committees, conducted for the purpose of research, discipline or medical study; the privilege statutes were intended to provide broader protections of confidentiality, privilege and immunities than are afforded by mere peer review statutes. *Murphy v. Wood*, 105 Idaho 180, 667 P.2d 859 (Ct. App. 1983).

**39-1392a. Definitions.** — The following terms shall have the following meanings when used in this section:

(1) "Emergency medical services personnel" means emergency medical services providers certified by the department of health and welfare pursuant to section 56-1011 et seq., Idaho Code, and ambulance-based clinicians as defined in the rules governing emergency medical services as promulgated by the department of health and welfare.

(2) "Group medical practice" means a partnership, corporation, limited liability company, or other association formed for the purpose of offering health care services through physicians and other licensed or otherwise authorized health care providers who are partners, shareholders, members, employees, or contractors of such group medical practice.

(3) "Health care organization" means a hospital, in-hospital medical staff committee, medical society, managed care organization, licensed emergency medical service, group medical practice, or skilled nursing facility.

(4) "Hospital" means a facility in Idaho licensed under sections 39-1301 through 39-1314, Idaho Code, and defined in section 39-1301(a)(1), Idaho Code.

(5) "In-hospital medical staff committees" means any individual doctor who is a hospital staff member, or any hospital employee, or any group of such doctors and/or hospital employees, who are duly designated a committee by hospital staff bylaws, by action of an organized hospital staff, or by action of the board of directors of a hospital, and which committee is authorized by said bylaws, staff or board of directors, to conduct research or study of hospital patient cases, or of medical questions or problems using data and information from hospital patient cases.

(6) "Licensed emergency medical service" means an ambulance service or a nontransport service licensed by the department of health and welfare pursuant to section 56-1011 et seq., Idaho Code.

(7) "Managed care organization" means a public or private person or organization which offers a managed care plan.

(8) "Managed care plan" means a contract of coverage given to an individual, family or group of covered individuals pursuant to which a



member is entitled to receive a defined set of health care benefits through an organized system of health care providers in exchange for defined consideration and which requires the member to use, or creates financial incentives for the member to use, health care providers owned, managed, employed by or under contract with the managed care organization.

(9) "Medical society" means any duly constituted, authorized and recognized professional society or entity made up of physicians licensed to practice medicine in Idaho, having as its purpose the maintenance of high quality in the standards of health care provided in Idaho or any region or segment of the state, operating with the approval of the Idaho state board of medicine, or any official committee appointed by the Idaho state board of medicine.

(10) "Patient care records" means written or otherwise recorded, preserved and maintained records of the medical or surgical diagnostic, clinical, or therapeutic care of any patient treated by or under the direction of licensed professional personnel, including emergency medical services personnel, in every health care organization subject to this act, whether as an inpatient or outpatient of the health care organization.

(11) "Peer review" means the collection, interpretation and analysis of data by a health care organization for the purpose of bettering the system of delivery of health care or to improve the provision of health care or to otherwise reduce patient morbidity and mortality and improve the quality of patient care. Peer review activities by a health care organization include, without limitation:

(a) Credentialing, privileging or affiliating of health care providers as members of, or providers for, a health care organization;

(b) Quality assurance and improvement, patient safety investigations and analysis, patient adverse outcome reviews, and root-cause analysis and investigation activities by a health care organization; and

(c) Professional review action, meaning an action or recommendation of a health care organization which is taken or made in the conduct of peer review, that is based on the competence or professional conduct of an individual physician or emergency medical services personnel where such conduct adversely affects or could adversely affect the health or welfare of a patient or the physician's privileges, employment or membership in the health care organization or in the case of emergency medical services personnel, the emergency medical services personnel's scope of practice, employment or membership in the health care organization.

(12) "Peer review records" means all evidence of interviews, reports, statements, minutes, memoranda, notes, investigative graphs and compilations and the contents thereof, and all physical materials relating to peer review of any health care organization. "Peer review records" does not mean or include patient care records; provided however, that the records relating to the identification of which particular patient care records were selected for, or reviewed, examined or discussed in peer review by a health care organization and the methodology used for selecting such records shall be considered peer review records.

(13) "Skilled nursing facility" means a facility licensed under chapter 13, title 39, Idaho Code, to provide skilled care to recipients.

**History.**

1973, ch. 265, § 2, p. 545; am. 1984, ch. 113, § 1, p. 257; am. 1997, ch. 171, § 2, p. 485; am.

2003, ch. 244, § 1, p. 628; am. 2004, ch. 134, § 1, p. 454; am. 2005, ch. 103, § 1, p. 324.

**STATUTORY NOTES****Cross References.**

State board of medicine, § 54-1805.

to S.L. 2003, ch. 244, which is codified as §§ 39-1392a to 39-1392d, 39-1393, and 54-1818.

**Compiler's Notes.**

The term "this act" in subsection (10) refers

**39-1392b. Records confidential and privileged.** — Except as provided in section 39-1392e, Idaho Code, all peer review records shall be confidential and privileged, and shall not be directly or indirectly subject to subpoena or discovery proceedings or be admitted as evidence, nor shall testimony relating thereto be admitted in evidence, or in any action of any kind in any court or before any administrative body, agency or person for any purpose whatsoever. No order of censure, suspension or revocation of licensure, or of a certification in the case of emergency medical services personnel, or health care organization privilege of any physician licensed to practice medicine in Idaho shall be admissible in any civil proceeding seeking damages or other civil relief against the physician, emergency medical services personnel, or health care organization which may be a defendant in said cause. However, this section shall not prohibit or otherwise affect the use of documents, materials or testimony in health care organization proceedings, nor shall it prohibit or otherwise affect the dissemination, for medical purposes, of information contained in such documents or materials or the conclusions and findings of such health care organization. This section shall not affect the admissibility in evidence in any action or proceeding of the patient care records of any patient.

**History.**

1973, ch. 265, § 3, p. 545; am. 1997, ch. 171,

§ 3, p. 485; am. 2003, ch. 244, § 2, p. 628; am. 2004, ch. 134, § 2, p. 454.

**STATUTORY NOTES****Cross References.**

Confidential relations and communications, § 9-203.

**JUDICIAL DECISIONS****ANALYSIS**

Hospital tumor board meetings.  
Legislative intent.

**Hospital Tumor Board Meetings.**

Applying privilege to activity of hospital tumor board in discussing current care and treatment of a cancer patient and making a recommendation for surgery was not inconsistent with the purposes set forth in the statute, since dealing with actual current patient cases, rather than hypothetical or former case histories, could result in immediate, prag-

matic benefits to patients from such medical studies and educational processes; the board's activities in this instance came within the scope of §§ 39-1392 to 39-1392e. *Murphy v. Wood*, 105 Idaho 180, 667 P.2d 859 (Ct. App. 1983).

Order of court which held inadmissible all records and minutes of hospital tumor board meeting at which defendant physicians



sought and received opinion of board concerning recommended treatment of plaintiff in malpractice action, and which, in addition, held all testimony relating to such meeting to be inadmissible, was proper *Murphy v. Wood*, 105 Idaho 180, 667 P.2d 859 (Ct. App. 1983).

**Legislative Intent.**

The legislature intended to establish a broad privilege for the records and proceed-

ings of hospital medical staff committees which extends to all discussions and proceedings by hospital staff committees, conducted for the purpose of research, discipline or medical study; the privilege statutes were intended to provide broader protections of confidentiality, privilege and immunities than are afforded by mere peer review statutes. *Murphy v. Wood*, 105 Idaho 180, 667 P.2d 859 (Ct. App. 1983).

**39-1392c. Immunity from civil liability.** — The furnishing of information or provision of opinions to any health care organization or the receiving and use of such information and opinions shall not subject any health care organization or other person to any liability or action for money damages or other legal or equitable relief. Custodians of such records and persons becoming aware of such data and opinions shall not disclose the same except as authorized by rules adopted by the board of medicine or as otherwise authorized by law. Any health care organization may receive such disclosures, subject to an obligation to preserve the confidential privileged character thereof and subject further to the requirement that such requests shall be made and such use shall be limited to aid the health care organization in conducting peer review.

**History.**

1973, ch. 265, § 4, p. 545; am. 1997, ch. 171, § 4, p. 485; am. 2003, ch. 244, § 3, p. 628.

**STATUTORY NOTES**

**Cross References.**

State board of medicine, § 54-1805.

**JUDICIAL DECISIONS**

**Credentialing.**

This section does not grant immunity to a health care organization for making a negligent credentialing decision, in granting hos-

pital privileges to an unqualified physician. *Harrison v. Binnion*, 147 Idaho 645, 214 P.3d 631 (2009).

**39-1392d. Property of health care organization.** — All peer review records of a health care organization shall be the property of the health care organization concerned which obtains or compiles the same. A health care organization may provide peer review records to persons or entities that perform accreditation, certification or quality assurance review or evaluation of the health care organization. The provision of any peer review records to such persons or entities shall not be deemed to be a waiver by the health care organization of any peer review privilege. Persons and entities receiving peer review records shall preserve the confidential privileged character thereof and such persons and entities shall not be subject to subpoena or order compelling production of peer review records. Nothing in this section shall be deemed to require the health care organization to provide persons or entities with peer review records. A health care organization may provide peer review records to persons or entities with whom the health care organization is affiliated through any common ownership



interest or by contract, which affiliation or contract includes the person's or entity's involvement in the peer review process or the provision of any management or administrative services to the health care organization. The provision of peer review records to such persons or entities shall not be deemed to be a waiver by the health care organization of any peer review privilege. Such persons and entities receiving peer review records shall preserve the confidential privileged character thereof, and such persons and entities shall not be subject to any subpoena or order compelling production of peer review records. Nothing in this section shall be deemed to require the health care organization to provide such persons or entities with peer review records. This section shall in no way impair the rights of individuals conducting such research or studies in the exercise of any right or the discharge of any legitimate responsibility which they may have in connection with such research or studies and the results thereof. Nothing in this act shall be construed as restricting or altering the rights of inspection and copying by patients and their duly authorized representatives with respect to such patients' official patient care records, which right of copying and inspection and use of patient care records and their contents in appropriate judicial proceedings is unaltered by this enactment.

**History.**

1973, ch. 265, § 5, p. 545; am. 1997, ch. 171,  
§ 5, p. 485; am. 2003, ch. 244, § 4, p. 628.

**STATUTORY NOTES****Compiler's Notes.**

The words "this act" in the last sentence

refer to S.L. 1973, ch. 265, which is compiled  
as §§ 39-1392 to 39-1392e.

**39-1392e. Limited exceptions to privilege and confidentiality. —**

(a) In the event of a claim or civil action against a physician, emergency medical services personnel, a hospital or a skilled nursing facility arising out of a particular physician-patient, emergency medical services personnel-patient, hospital-patient relationship, or skilled nursing facility-patient, or which concerns the sufficiency of the delivery of particular health care to a specific patient, any health care organization having information of the kind covered by section 39-1392b, Idaho Code, shall, when interrogated as hereinafter provided, advise any such claimant who is or was such a patient or who, in a representative capacity, acts on behalf of such patient or his heirs, as follows:

- (1) Whether it has conducted or has in progress an inquiry, proceeding or disciplinary matter regarding the quality or propriety of the health care involved, which concerns the subject patient while he was under the care or responsibility of a member of such health care organization or while he was a patient in such hospital or facility; and, if so,
- (2) Whether disposition of any kind resulted or will result therefrom; and, if so,
- (3) What the disposition was, or, if not yet determined, approximately when it will be determined.

Such disclosure of information shall be limited to the health care organization's actions in connection with the physician, emergency medical services

personnel, hospital or skilled nursing facility against whom such claim is asserted.

(b) Such a claimant shall likewise be entitled to inquire of such health care organization respecting the names and addresses of persons who such health care organization knows to have direct knowledge of the provision of the health care in question, such inquiry to be limited, however, to the particular patient and the particular times and occasions germane to the specific occurrences on which the claim is based; provided, names shall not be disclosed respecting persons who have gained secondary knowledge or formed opinions respecting the matter solely by participating as witnesses, officials, investigators or otherwise on, for, or in connection with such a health care organization committee, staff, governing board or the state board of medicine.

(c) Such limited, conditional discovery and disclosure of information as provided above shall be allowed only in response to inquiries directed to such a health care organization, and then only if initially propounded by a claimant of the type above described. If the matter is in litigation, inquiry may be by customary means of discovery under the Idaho rules of civil procedure, or, if pending in a United States court, then under discovery as allowed by its applicable rules; provided, pendency of the claim in the United States court or before any other tribunal shall not operate to broaden the exception to the rules of privilege, confidentiality and immunity set down in this act.

(d) Such disclosures may be voluntarily made without judicial order or formal discovery if all disciplined, accused or investigated physicians or emergency medical services personnel consent thereto, and if privileged or confidential information regarding any other patient, physician, emergency medical services personnel, or person will not be disclosed thereby. When the terms of this paragraph are complied with, such voluntary disclosures may be made without civil liability therefor as if in due response to valid judicial process or order.

(e) If any claimant makes such inquiry of any such health care organization, he shall be deemed to have consented to like inquiry and disclosure rights for the benefit of all parties against whom he asserts such claim or brings such suit or action, and all other persons who are parties to such action, and thereafter all such persons and parties may invoke the provisions of this section, seeking and securing specific information as herein provided for the benefit of such claimant, to the same extent as the same is allowed to such claimant.

(f) If any physician, emergency medical services personnel, patient, person, organization or entity whose conduct, care, chart, behavior, health or standards of ethics or professional practice is the subject of investigation, comment, testimony, dispositive order of any kind or other written or verbal utterance or publication or act of any such health care organization or any member or committee thereof in the course of research, study, disciplinary proceeding or investigation of the sort contemplated by this act, makes claim or brings suit on account of such health care organization activity, then, in the defense thereof, confidentiality and privilege shall be deemed waived by the making of such claim, and such health care organization and



the members of their staffs and committees shall be allowed to use and resort to such otherwise protected information for the purpose of presenting proof of the facts surrounding such matter, and this provision shall apply whether such claim be for equitable or legal relief or for intentional or unintentional tort of any kind and whether pressed by a patient, physician, emergency medical services personnel, or any other person, but such waiver shall only be effective in connection with the disposition or litigation of such claim, and the court shall, in its discretion, enter appropriate orders protecting, and as fully as it reasonably can do so, preserving the confidentiality of such materials and information.

#### **History.**

1973, ch. 265, § 6, p. 545; am. 1997, ch. 171,

§ 6, p. 485; am. 2004, ch. 134, § 3, p. 454; am. 2005, ch. 103, § 2, p. 324.

### **STATUTORY NOTES**

#### **Cross References.**

State board of medicine, § 54-1805.

#### **Compiler's Notes.**

The words "this act", at the end of subsec-

tion (c) and in the first sentence in subsection (f), refer to S.L. 1973, ch. 265, which is compiled as §§ 39-1392 to 39-1392e.

### **JUDICIAL DECISIONS**

#### **ANALYSIS**

Consent to disclosure.

Construction.

Disclosure to claimant.

Information held privileged.

Waiver.

#### **Consent to Disclosure.**

Subsection (e) of this section merely provides that if a claimant makes inquiry, under subsection (b) of this section, for disclosure of the names of persons having direct knowledge concerning his case, he has consented to disclosure of such information to other parties; it did not entitle doctors defending malpractice action to disclosure of any of the records or minutes of a hospital tumor board meeting nor permit them to present evidence at trial that the board recommended that the plaintiff patient undergo an operation. *Murphy v. Wood*, 105 Idaho 180, 667 P.2d 859 (Ct. App. 1983).

#### **Construction.**

Subsection (d) of this section must be read in conjunction with subsection (a). *Murphy v. Wood*, 105 Idaho 180, 667 P.2d 859 (Ct. App. 1983).

#### **Disclosure to Claimant.**

Where plaintiff in malpractice action opposed disclosure of evidence concerning hospital tumor board meeting at which plaintiff's condition was discussed and surgery recommended, defendant physicians could not compel disclosure under subsections (a) and (d) of this section since subsection (a) only confers

the right to disclosure of such information on the "claimant" in an action against a hospital or physician. *Murphy v. Wood*, 105 Idaho 180, 667 P.2d 859 (Ct. App. 1983).

#### **Information Held Privileged.**

Order of court which held inadmissible all records and minutes of hospital tumor board meeting at which defendant physicians sought and received opinion of board concerning recommended treatment of plaintiff in malpractice action, and which, in addition, held all testimony relating to such meeting to be inadmissible, was proper; however, since it would be unfair to prevent the physicians from showing that they had consulted with the board while allowing the plaintiff to argue that physicians had failed to comply with local standard of care by not seeking a second opinion before operating, an order must be entered to prevent the plaintiff from so arguing. *Murphy v. Wood*, 105 Idaho 180, 667 P.2d 859 (Ct. App. 1983).

#### **Waiver.**

Where a patient whose care was the subject of discussion by a hospital tumor board filed a lawsuit against the board on account of its "activity," i.e., its alleged recommendation that surgery be performed, and also filed suit



against two doctors, who were being sued not "on account of" any activity of the tumor board but because of the alleged negligence of the doctors independent from any board activity, that part of the suit which was directed against the doctors did not activate the waiver provisions of subsection (f) and did not provide a basis for the doctors to compel disclosure of the board's records. *Murphy v. Wood*, 105 Idaho 180, 667 P.2d 859 (Ct. App. 1983).

Where patient brought malpractice action against hospital and against tumor board which allegedly discussed patient's case and recommended surgery, the board and hospital could use the records and minutes of board's meeting in their own defense under subsection (f) of this section, but until they chose to do so such information was protected from disclosure. *Murphy v. Wood*, 105 Idaho 180, 667 P.2d 859 (Ct. App. 1983).

**39-1392f. Peer review.** — Every hospital subject to this act shall cause the hospital's medical staff to organize in-hospital medical staff committees which shall have the responsibility of reviewing the professional practices of members of the hospital's medical staff for the purpose of reducing morbidity and mortality, and for the improvement of the care of patients in the hospital. This review shall include, but not be limited to, the quality and necessity of care provided to patients.

**History.**

I.C., § 39-1392f, as added by 1986, ch. 95, § 1, p. 273.

**STATUTORY NOTES**

**Compiler's Notes.**

The words "this act" refer to S.L. 1986, ch. 95, which is compiled as this section.

**39-1393. Notification of professional review action imposed upon physician or emergency medical services personnel.** — (1) Any health care organization in this state that is by law required to conduct peer review or which voluntarily formally elects to conduct professional review actions shall notify the board of medicine of professional review actions taken against physicians licensed in Idaho required to be reported as provided in this section. Such reports shall be made to the board of medicine within fifteen (15) days of completion of the professional review action by the health care organization. For emergency medical services personnel, such reports shall be made to the department of health and welfare within fifteen (15) days of completion of the professional review action by the health care organization. Such required reports shall be made on forms approved by the board of medicine for reports concerning physicians, or the department of health and welfare for reports concerning emergency medical services personnel, consistent with the reporting requirements of this section. The reporting obligation shall not be stayed by the filing of any court proceeding unless otherwise ordered by the court.

(2) A health care organization in Idaho shall report to the board of medicine if it:

(a) Takes a professional review action against a physician licensed in Idaho and imposes a sanction of the type included in subsection (3) of this section which lasts longer than thirty (30) days; or

(b) Accepts a voluntary sanction by a physician licensed in Idaho of the type identified in subsection (3) of this section while the physician is

under investigation or to avoid investigation by the health care organization relating to the professional competence or professional conduct of the physician or in exchange for the health care organization not conducting such an investigation or initiating a professional review action, if the sanction lasts longer than thirty (30) days.

(3) Professional review action sanctions against a physician which must be reported to the board of medicine pursuant to subsection (2) of this section, whether voluntary or involuntary, shall be:

- (a) Restriction or limitation of privileges;
- (b) Revocation of privileges;
- (c) Suspension of privileges;
- (d) Reduction of privileges;
- (e) Denial of a request for initial privileges;
- (f) Submission to monitoring of the physician's physical or mental condition;
- (g) Submission to monitoring of the physician's delivery of medical services other than to assess and monitor the physician's qualifications for new or additional privileges;
- (h) Surrender of privileges;
- (i) Summary suspension or reduction of privileges lasting longer than thirty (30) days;
- (j) Termination of employment;
- (k) Suspension of employment lasting longer than thirty (30) days.

(4) The reporting requirements of this section shall not apply to:

- (a) Actions based on compliance with medical records or confidentiality requirements of a health care organization;
- (b) Voluntary requests for assistance or monitoring by a physician as part of an educational process to improve physician skills or enhance patient care when unrelated to a professional review action concerning the quality or necessity of patient medical care;
- (c) Voluntary or involuntary revocation, nonrenewal, denial, reduction, restriction, resignation, or limitation of privileges or employment of a physician based upon factors not directly impacting the quality of patient care or safety of practice of the physician;
- (d) Adverse actions taken against a physician by a health care organization that is not required by law to conduct peer review and that has not voluntarily formally elected to conduct professional review actions; and
- (e) The denial of a physician's request for additional privileges or credentials with a health care organization.

(5) The report to the board of medicine required by this section shall include a statement of the quality of care concerns or professional conduct that is the basis of the professional review action or investigation and the reportable professional review action sanction voluntarily accepted or involuntarily imposed.

(6) A health care organization required to report a professional review action concerning a physician to the board of medicine pursuant to this section shall, if requested by the board of medicine, provide to the board the following:

- (a) A statement of the specific quality of care concerns or professional conduct which resulted in the professional review action sanction;
- (b) A statement of the specific professional review action sanction; and
- (c) Any patient care records of the health care organization regarding the care provided by the reported physician. However, the board of medicine may not request or require production of any peer review records from any person or health care organization, including the identification of which particular patient care records were selected for, or reviewed, examined or discussed in any peer review activity of a health care organization, or the method used by the health care organization to select such patient care records for peer review.

(7) The records lawfully requested by the board of medicine pursuant to subsection (6) of this section shall be provided by the health care organization without a subpoena or court order. If the health care organization fails to comply with the board of medicine's lawful request, the board may petition the district court for an order compelling compliance with the board's request, which shall be granted if disclosure is required by law.

(8) Professional review action sanctions against emergency medical services personnel, whether voluntary or involuntary, which are the result of any action, conduct, or failure to act which is inconsistent with the professionalism and/or standards established in the rules governing emergency medical services personnel as promulgated by the department of health and welfare must be reported to the department of health and welfare.

(9) The report to the department of health and welfare required by this section shall include a statement of the quality of care concerns or professional conduct that is the basis of the professional review action or investigation and the reportable professional review action sanction voluntarily accepted or involuntarily imposed.

(10) Any person or health care organization that provides notification as required by law, or in a good faith belief that such notification is required by law, shall be immune from any civil or other liability arising from providing the notification. Such immunity shall likewise pertain to the provision of files, records and information a health care organization may in good faith provide to the board of medicine pursuant to this section or other applicable law. Such materials provided to the board of medicine shall be subject to disclosure by the board according to chapter 3, title 9, Idaho Code, and available only to the board of medicine and its staff unless and until such matter becomes the subject of formal proceedings by or before the board of medicine or authorized by it.

#### **History.**

I.C., § 39-1393, as added by 2003, ch. 244,  
§ 6, p. 628; am. 2004, ch. 134, § 4, p. 454.

#### **STATUTORY NOTES**

#### **Cross References.**

Department of health and welfare, § 56-1001 et seq.

State board of medicine, § 54-1805.

#### **Prior Laws.**

Former § 39-1393, which was comprised



1976, ch. 80, § 1, p. 257; am. 1986, ch. 100, § 1, p. 280; am. 1990, ch. 213, § 42, p. 480, was repealed by S.L. 2003, ch. 244, § 5.

**39-1394. Patient care records — Retention — Authentication. —**

**(1) Retention.**

(a) Hospital records relating to the care and treatment of a patient may be preserved in microfilm, other photographically reproduced form or electronic medium. Such reproduced and preserved copies shall be deemed originals for purposes of section 9-420, Idaho Code.

(b) Clinical laboratory test records and reports may be destroyed five (5) years after the date of the test recorded or reported therein, pursuant to paragraph (d) of this subsection.

(c) X-ray films may be destroyed five (5) years after the date of exposure, or five (5) years after the patient reaches the age of majority, whichever is later, pursuant to paragraph (d) of this subsection, if there are in the hospital record written findings of a physician who has read such x-ray films.

(d) At any time after the retention periods specified in paragraphs (b) and (c) of this subsection, the hospital may, without thereby incurring liability, destroy such records, by burning, shredding or other effective method in keeping with the confidential nature of their contents, provided, however, that destruction of such records must be in the ordinary course of business and no record shall be destroyed on an individual basis.

(e) For purposes of this section, the term "hospital" shall include all facilities defined as hospitals in chapter 13, title 39, Idaho Code.

**(2) Authentication.**

(a) Hospital records relating to orders for the care and treatment of a patient or for the administration of any drug or pharmaceutical must be authenticated to ensure accuracy and patient safety.

(b) All orders must be authenticated by the author of the order.

(c) When telephone or oral orders must be used, they must be:

(i) Accepted only by personnel authorized to do so by medical staff policies and procedures, consistent with federal and state law; and

(ii) Authenticated by the author of the order in a timely manner as stipulated by hospital policy.

(d) Authentication may occur either manually, with the practitioner's signature, or electronically by facsimile transmission signed by the practitioner or by means of a unique electronic code known only to the practitioner.

(e) Each hospital must have in place policies and mechanisms to assure timely authentication of all orders and to assure that only the author of an order can authenticate his or her own entry.

**History.**

I.C., § 39-1394, as added by 1977, ch. 102, § 1, p. 217; am. 2001, ch. 67, § 1, p. 125.

**39-1395. Practice of podiatry — Medical staff membership. —**  
Except as otherwise provided in this section, no provision or provisions of

this section shall in any way change or modify the authority or power of the governing body of any hospital to make such rules, standards or qualifications for medical staff membership as they, in their discretion, may deem necessary or advisable, or to grant or refuse membership on a medical staff.

An applicant for medical staff membership may not be denied membership solely on the ground that the applicant holds a license to practice podiatry issued by the Idaho state board of podiatry. The criteria utilized for granting medical staff membership shall be reasonable and shall not discriminate against podiatry.

The process for considering applications for medical staff membership and privileges shall afford each applicant due process.

All applications for medical staff membership shall be acted upon within one hundred twenty (120) days from the date the required information is submitted.

The accordane and delineation of clinical privileges for podiatrists shall be determined on an individual basis and commensurate with the applicant's education, training, experience and demonstrated competence. In implementing these procedures, each hospital shall formulate and apply reasonable standards that do not discriminate in the evaluation of an applicant's credentials.

A member of the medical staff licensed pursuant to chapter 18, title 54, Idaho Code, shall have responsibility for the overall medical care of the patient while in the hospital. Arrangements for the services of a member of the medical staff licensed pursuant to chapter 18, title 54, Idaho Code, for the purposes of this section shall be the sole responsibility of the admitting podiatrist and not that of the hospital or any other member of the medical staff.

#### **History.**

I.C., § 39-1395, as added by 1992, ch. 134,  
§ 2, p. 421; am. 2004, ch. 133, § 1, p. 453.

### **STATUTORY NOTES**

#### **Cross References.**

State board of podiatry, § 54-604 et seq.

### **JUDICIAL DECISIONS**

#### **Due process.**

Dismissal of the physician's action against the hospital seeking to force the hospital to grant him medical staff privileges was proper where the challenged factors in the bylaws for

evaluating applications were not so vague as to have denied the physician due process as required by this section. *Miller v. St. Alphonsus Reg'l Med. Ctr., Inc.*, 139 Idaho 825, 87 P.3d 934 (2004).

## CHAPTER 14

### HEALTH FACILITIES

## SECTION.

- 39-1401. Short title.
- 39-1402. Definitions.
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- 39-1417. Separability.
- 39-1418 — 39-1440. [Reserved.]

#### HEALTH FACILITY AUTHORITIES

- 39-1441. Short title.
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## SECTION.

- 39-1445. Quorum — Mode of action — Expenses.
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- 39-1450B. Purchase.
- 39-1450C. Procedure before issuance of bonds. [Repealed.]
- 39-1450D. Trust agreement to secure bonds.
- 39-1451. Payment of bonds—Nonliability of state.
- 39-1452. Exemption from taxation — Securities law.
- 39-1453. Rents and charges.
- 39-1453A. Fees.
- 39-1454. Conveyance of title to institution.
- 39-1455. Powers not restricted — Law complete in itself.
- 39-1456. Facilities governed by laws of locality.
- 39-1457. Investment of funds.
- 39-1457A. Trust funds.
- 39-1457B. Agreement of the state.
- 39-1458. Bonds eligible for investment.
- 39-1459. Exemption from construction and bidding requirements for public buildings.
- 39-1460. Powers in addition to those granted by other laws—Severability.

**39-1401. Short title.** — This act may be cited as the “Health Facilities Construction Act.”

**History.**

1947, ch. 220, § 1, p. 526; am. 1965, ch. 123, § 1, p. 240.

#### STATUTORY NOTES

**Compiler's Notes.**

The words “this act” refer to S.L. 1947, ch.

220, which is compiled as §§ 39-1401 to 39-1417.

**39-1402. Definitions.** — As used in this act:

- (a) “Agency” means the department of health and welfare;
- (b) “The federal act” shall mean, when applicable, either (1) Public Law 725 of the 79th Congress, approved August 13, 1946, entitled the Hospital



Survey and Construction Act and amendments thereto or (2) Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, Public Law 88-164, and amendments thereto or (3) Public Law 91-517 of the 91st Congress, and amendments thereto;

(c) "The surgeon general" means the surgeon general of the public health service of the United States;

(d) "Health facilities" shall mean any of the following:

(1) "Hospital" means a place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment or care for not less than twenty-four (24) hours in any week of two (2) or more nonrelated individuals suffering from illness, disease, injury, deformity, or requiring care because of old age, or a place devoted primarily to providing for not less than twenty-four (24) hours in any week of obstetrical or other medical or nursing care for two (2) or more nonrelated individuals. The term hospital includes public health centers in general, tuberculosis, mental, chronic disease and other types of hospitals, and related facilities, such as laboratories, outpatient departments, nurses' home and training facilities, and central service facilities operated in connection with hospitals;

(2) A facility for the provision of public health services, including related facilities such as laboratories, clinics, and administrative offices operated in connection with said facility;

(3) A facility specially designed for the diagnosis, treatment, education, training, or custodial care of people with intellectual disabilities, including facilities for training specialists and sheltered workshops for people with intellectual disabilities, but only if such workshops are part of facilities which provide or will provide comprehensive services for people with intellectual disabilities;

(4) A facility providing services for the prevention or diagnosis of mental illness, or care and treatment of mentally ill patients, or rehabilitation of such persons, which services are provided principally for persons residing in a particular community or communities in or near which the facility is situated or at a statewide facility;

(e) "The secretary" means the secretary of health and human services of the United States, or his delegate to administer the federal act;

(f) "Nonprofit facility" means a facility which is owned and operated by one (1) or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

**History.** 1947, ch. 220, § 2, p. 526; am. 1965, ch. 123, § 2, p. 240; am. 1972, ch. 327, § 1, p. 812; am. 1974, ch. 23, § 122, p. 633; am. 2010, ch. 235, § 25, p. 542.

STATUTORY NOTES

**Cross References.** Department of health and welfare, § 56-1001 et seq.

**Amendments.** The 2010 amendment, by ch. 235, throughout paragraph (d)(3), substituted "people with

intellectual disabilities" for "the mentally retarded"; and in subsection (e), substituted "secretary of health and human services" for "secretary of health, education and welfare."

#### Federal References.

Public Law 725 of the 79th Congress, the Hospital Survey and Construction Act (Hill-Burton), as amended, referred to in subdivision (b) of this section, was compiled generally as 42 USCS § 291 et seq. The provisions of that act were omitted from the revision of that portion of Title 42 by act of Aug. 18, 1964, P.L. 88-443, but related provisions are still found at 42 USCS § 291 et seq.

The Mental Retardation Facilities and Community Mental Health Centers Construc-

tion Act of 1963, P.L. 88-164, referred to in subdivision (b), was eliminated or repealed. Similar federal provisions may now be found at 42 USCS § 15001 et seq.

Public Law 91-517, referred to in subdivision (b), was eliminated or repealed. Similar federal provisions may now be found at 42 USCS § 15001 et seq.

#### Compiler's Notes.

All functions of the public health service and office of the surgeon general were transferred to the department of health, education, and welfare in 1966 and then to the department of health and human services in 1979.

### RESEARCH REFERENCES

**Am. Jur.** — 40A Am. Jur. 2d, Hospitals and Asylums, § 1 et seq.

**C.J.S.** — 41 C.J.S., Hospitals, § 1 et seq.

**39-1403. Administration — Division of health facilities survey and construction.** — There is hereby established in the state department of health and welfare a division of health facilities survey and construction which shall be administered by a full time salaried director under the supervision and direction of the agency.

#### History.

1947, ch. 220, § 3, p. 526; am. 1965, ch. 123, § 3, p. 240; am. 1972, ch. 327, § 2, p. 812.

### STATUTORY NOTES

#### Cross References.

Department of health and welfare, § 56-1001 et seq.

#### Compiler's Notes.

As amended by S.L. 1972, ch. 327, § 2 this section contained the words "in this act, and"

which apparently were inadvertently left in the law as amended.

The name "department of health" has been changed to "department of health and welfare" on authority of S.L. 1974, ch. 286, § 1 and S.L. 1974, ch. 39, §§ 48, 49 (§§ 39-104, 39-105).

### RESEARCH REFERENCES

**Am. Jur.** — 40 Am. Jur. 2d, Hospitals and Asylums, § 3.

**C.J.S.** — 41 C.J.S., Hospitals, § 1 et seq.

**39-1404. General powers and duties.** — In carrying out the purposes of the act, the agency is authorized and directed:

(a) To require such reports, inspections and investigations and prescribe such regulations as it deems necessary;

(b) To provide such methods of administration, appoint a director and other personnel of the division on a merit basis and take such other action as may be necessary to comply with the requirements of the federal act and the regulations thereunder;

(c) To procure in its discretion the temporary or intermittent services of experts or consultants or organizations thereof, by contract, when such

services are to be performed on a part-time or fee-for-service basis and do not involve the performance of administrative duties;

(d) To the extent that it considers desirable to effectuate the purposes of this act, to enter into agreements for the utilization of the facilities and services of other departments, agencies, and institutions, public or private;

(e) To accept on behalf of the state and to deposit with the state treasury any grant, gift or contribution made to assist in meeting the cost of carrying out the purposes of this act as herein provided;

(f) To make a bi-annual report to the legislature on activities and expenditures pursuant to this act, including recommendations for such additional legislation as the agency considers appropriate to furnish adequate health facilities to the people of this state;

(g) To do all other things on behalf of the state necessary to obtain full benefits under the federal act as now and hereafter amended.

#### History.

1947, ch. 220, § 4, p. 525; am. 1965, ch. 123,  
§ 4, p. 240; am. 1972, ch. 327, § 3, p. 812.

#### STATUTORY NOTES

##### Federal References.

For the federal act referred to in this section, see Federal References, § 39-1402.

S.L. 1947, ch. 220, which is compiled as §§ 39-1401 to 39-1417.

##### Compiler's Notes.

The words "this act" and "the act" refer to

**39-1405. Advisory council.** — The governor shall appoint such advisory councils to advise and consult with the agency charged with the carrying out of the administration of this act and shall also appoint the chairmen of all such advisory councils.

Members of the councils hereinafter created shall hold office for a term of six (6) years, their terms expiring successively on the second Monday in January in the odd-numbered years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and the terms of office of the members first taking office shall expire, as designated at the time of appointment, at least one-third (1/3) thereof at the end of the second year, at least one-third (1/3) thereof at the end of the fourth year, and at least one-third (1/3) thereof at the end of the sixth year after the date of appointment. Council members while serving on the business of the councils shall be compensated as provided by section 59-509(d), Idaho Code. The councils shall meet as frequently as the chairman deems necessary, but not less than once each year. Upon request by a majority of the members of a specific council, it shall be the duty of the chairman to call a meeting of that council.

The agency shall assist the governor in establishing the necessary guidelines and qualifications of appointees and direct to the attention of the governor the mandatory requirements of any federal statutes, regulations and standards concerning the number, representative capacity, professional background, and such other matters concerning membership and organiza-



tion of said councils to insure state compliance with federal laws, regulations and standards.

**History.**

1947, ch. 220, § 5, p. 526; am. 1965, ch. 123, § 5, p. 240; am. 1972, ch. 327, § 4, p. 812; am. 1980, ch. 247, § 35, p. 582.

**STATUTORY NOTES****Compiler's Notes.**

The words "this act" refer to S.L. 1947, ch. 220, which is compiled as §§ 39-1401 to 39-1417.

**39-1406. Survey and planning activities.** — The agency is authorized and directed to make an inventory of existing health facilities, including public, nonprofit and proprietary, to survey the need for construction of health facilities, and, on the basis of such inventory and survey, to develop a program for the construction of such public and other nonprofit facilities as will, in conjunction with existing facilities, afford the necessary physical facilities for furnishing adequate health facilities and similar services to all the people of the state.

**History.**

1947, ch. 220, § 6, p. 526; am. 1965, ch. 123, § 6, p. 240; am. 1972, ch. 327, § 5, p. 812.

**RESEARCH REFERENCES**

**C.J.S.** — 41 C.J.S., Hospitals, § 1 et seq.

**39-1407. Construction program.** — The construction program shall provide, in accordance with regulations prescribed under the federal act, for adequate health facilities for the people residing in this state and insofar as possible shall provide for their distribution throughout the state in such manner as to make all types of health facilities reasonably accessible to all persons in the state.

**History.**

1947, ch. 220, § 7, p. 526; am. 1965, ch. 123, § 7, p. 240; am. 1972, ch. 327, § 6, p. 812.

**STATUTORY NOTES****Cross References.**

Federal act, § 39-1402 and notes thereto.

**39-1408. Application for federal funds for survey and planning — Expenditure.** — The agency is authorized to make application for and receive federal funds to assist in carrying out the activities herein provided. Such funds shall be delivered to the state treasurer and by him deposited in the funds hereinafter created. Such funds are hereby appropriated to the state board of health and welfare for expenditure for carrying out the activities authorized by this act. Any such funds received and not expended for such purposes shall be disposed of pursuant to the federal act.

**History.**

1947, ch. 220, § 8, p. 526; am. 1965, ch. 123, § 8, p. 240; am. 1972, ch. 327, § 7, p. 812.

**STATUTORY NOTES**

**Cross References.**

Federal act, § 39-1402 and notes thereto.

**Compiler's Notes.**

The words "this act" refer to S.L. 1947, ch. 220, which is compiled as §§ 39-1401 to 39-1417.

The name "state board of health" has been changed to "state board of health and welfare" on authority of S.L. 1974, ch. 236, § 1 and S.L. 1974, ch. 23, § 47 (§ 39-103).

**39-1409. State plan.** — The agency shall prepare and submit to the surgeon general and/or secretary a state plan which shall include the health facilities construction program developed under this act and which shall provide for the establishment, administration, and operation of health facilities construction activities in accordance with the requirements of the federal act and regulations thereunder. The agency shall, prior to the submission of such plan to the surgeon general and/or secretary, give publicity to a general description of all the provisions proposed to be included therein and cause a public hearing to be held at which all persons or organizations with a legitimate interest in such plan may be given an opportunity to express their views. After approval of the plan by the surgeon general and/or secretary, the agency shall publish a general description of the provisions thereof in such newspapers as will give circulation in each county in the state and shall make the plan, or a copy thereof, available upon request to all interested persons or organizations. The agency as required shall review the health facilities construction program and submit to the surgeon general and/or secretary any modifications thereof which he [it] may find necessary and may submit to the surgeon general and/or secretary such modifications of the state plan, not inconsistent with the requirements of the federal act, as it may deem advisable.

**History.**

1947, ch. 220, § 9, p. 526; am. 1965, ch. 123, § 9, p. 240; am. 1972, ch. 327, § 8, p. 812.

**STATUTORY NOTES**

**Cross References.**

Federal act, § 39-1402 and notes thereto.

Health care certificate of need, § 39-4901 et seq.

**Compiler's Notes.**

The bracketed word "it" was inserted by the

compiler, as the reference relates back to the inanimate "the agency."

The words "this act" refer to S.L. 1947, ch. 220, which is compiled as §§ 39-1401 to 39-1417.

**RESEARCH REFERENCES**

**Am. Jur.** — 41 Am. Jur. 2d, Hospitals and Asylums, § 5.

**39-1410. Minimum standards for maintenance and operation of facilities.** — The agency shall by regulation prescribe minimum standards

for the maintenance and operation of health facilities which receive federal aid for construction under the state plan.

**History.** 123, § 10, p. 240; am. 1972, ch. 327, § 9, p. 812.  
1947, ch. 220, § 10, p. 526; am. 1965, ch.

**39-1411. Priority of projects.** — The state plan shall set forth the relative need for the several projects included in the construction program determined in accordance with regulations prescribed pursuant to the federal act and provide for the construction, insofar as financial resources available therefor and for maintenance and operations make possible, in the order of such relative need.

**History.**  
1947, ch. 220, § 11, p. 526.

#### STATUTORY NOTES

**Cross References.**  
Federal act, § 39-1402 and notes thereto.

**39-1412. Construction projects — Applications.** — Applications for health facilities construction projects for which federal funds are requested shall be submitted to the agency and may be submitted by the state or any political subdivision thereof or by any public or nonprofit agency authorized to construct and operate health facilities. Each application for a construction project shall conform to federal and state requirements.

**History.** 123, § 11, p. 240; am. 1972, ch. 327, § 10, p. 812.  
1947, ch. 220, § 12, p. 526; am. 1965, ch.

**39-1413. Consideration and forwarding of applications.** — The agency shall afford to every applicant for a construction project an opportunity for a fair hearing. If the agency, after affording reasonable opportunity for development and presentation of applications in the order of relative need, finds that a project application complies with the requirements of section 39-1412[, Idaho Code,] and is otherwise in conformity with the state plan, it shall approve such application and shall recommend and forward it to the surgeon general and/or secretary.

**History.**  
1947, ch. 220, § 13, p. 526; am. 1972, ch. 327, § 11, p. 812.

#### STATUTORY NOTES

**Compiler's Notes.** compiler to conform to the statutory citation style.  
The bracketed insertion was added by the

**39-1414. Inspection of projects.** — From time to time the agency shall cause each construction project approved by the surgeon general and/or secretary to be inspected, and if the inspection so warrants, the agency shall



certify to the surgeon general and/or secretary that work has been performed upon the project, or purchases have been made, in accordance with the approved plans and specifications, and that payment of an installment of federal funds is due to the applicant.

**History.**

1947, ch. 220, § 14, p. 526; am. 1972, ch. 327, § 12, p. 812.

**39-1415. Construction funds.** — There is hereby created an account in the trust and agency fund in the state treasury, and all moneys deposited therein are perpetually appropriated for construction projects under this act. All federal funds received from the federal government for a construction project approved by the surgeon general and/or secretary shall be delivered to the state treasurer and by him deposited in the health facilities construction account. Such money shall be used solely for payments due applicants for work performed, or purchases made, in carrying out approved projects.

**History.**

1947, ch. 220, § 15, p. 526; am. 1965, ch. 123, § 12, p. 240; am. 1972, ch. 327, § 13, p.

812; am. 1974, ch. 23, § 123, p. 633; am. 1976, ch. 51, § 13, p. 152.

**STATUTORY NOTES**

**Compiler's Notes.**

The words "this act" refer to S.L. 1947, ch. 220, which is compiled as §§ 39-1401 to 39-1417.

**Effective Dates.**

Section 182 of S.L. 1974, ch. 23 provided the act should be in full force and effect on and after July 1, 1974.

**39-1416. Federal, state and other moneys — Joint municipal or county facilities.** — Every county and municipality is authorized to accept, receive, receipt for, disburse, and expend federal and state moneys and all other moneys, public or private, made available by grant, loan, gift or devise for public health purposes, including the construction, alteration, equipping, operation and maintenance of projects authorized by this act and the federal act, subject only to the terms of such grant.

Any two (2) or more municipalities and/or counties may join together for the owning, construction, alteration, repair, equipping, operation and/or maintenance of a health facility, which may be located within or without any such municipality or county, and the funds therefor shall be contributed by each such municipality and/or county as the participating municipalities and counties may mutually agree.

Any municipality or county may enter into a contract or other arrangement with any other municipality or county to obtain health facilities or similar services, and pay for the same out of municipal or county funds.

**History.**

1947, ch. 220, § 16, p. 526; am. 1965, ch.

123, § 13, p. 240; am. 1972, ch. 327, § 14, p. 812.

## STATUTORY NOTES

**Cross References.**

Federal act, § 39-1402 and notes thereto.  
 Joint county hospitals authorized, § 31-3512.

refers to S.L. 1965, ch. 123, which is codified as §§ 39-1401 to 39-1410, 39-1412, 39-1415 and 39-1416.

**Compiler's Notes.**

The term "this act" in the first paragraph

**Effective Dates.**

Section 14 of S.L. 1965, ch. 123 declared an emergency. Approved March 13, 1965.

**39-1417. Separability.** — If any provision of this act or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of the act are declared to be severable.

**History.**

1947, ch. 220, § 17, p. 526.

## STATUTORY NOTES

**Compiler's Notes.**

The words "this act" refer to S.L. 1947, ch.

220, which is compiled as §§ 39-1401 to 39-1417.

**39-1418 — 39-1440. [Reserved.]**

## HEALTH FACILITY AUTHORITIES

**39-1441. Short title.** — This act may be referred to and cited as the "Idaho Health Facilities Authority Act."

**History.**

1972, ch. 134, § 1, p. 286.

## STATUTORY NOTES

**Compiler's Notes.**

The words "this act" refer to S.L. 1972, ch. 134, which is codified as §§ 39-1441 to 39-

1447, 39-1448, 39-1449, 39-1450, 39-1451, 39-1452, 39-1454 to 39-1457, 39-1458 to 39-1460.

**39-1442. Declaration of necessity and purpose — Liberal construction.** — It is hereby determined and declared that for the benefit of the people of the state of Idaho and the improvement of their health, welfare and living conditions, it is essential that the people of this state have adequate medical care and health facilities; that it is essential that health institutions within the state be provided with appropriate additional means to assist in the development and maintenance of public health, health care, hospitals and related facilities; that it is the purpose of this act to provide a measure of assistance and alternative methods to enable health institutions in the state to refund or refinance outstanding indebtedness incurred for health facilities and to provide additional facilities and structures which are sorely needed to accomplish the purposes of this act, all to the public benefit and good as more fully provided herein; and it is the intent of the legislature by the passage of this act to create the Idaho health facilities authority to lend money to health institutions and to authorize the authority to acquire,

construct, reconstruct, repair, alter, improve, extend, own, lease and dispose of properties to the end that the authority may be able to promote the health and welfare of the people of this state and to vest such authority with all powers to enable such authority to accomplish such purpose; it is not intended by this act that the authority shall itself be authorized to operate any such health facility. This act shall be liberally construed to accomplish the intentions expressed herein.

**History.**

1972, ch. 134, § 2, p. 286; am. 1973, ch. 178, § 1, p. 393.

**STATUTORY NOTES**

**Cross References.**

Idaho health planning act, § 39-4901 et seq.

1447, 39-1448, 39-1449, 39-1450, 39-1451, 39-1452, 39-1454 to 39-1457, 39-1458 to 39-1460.

**Compiler's Notes.**

The words "this act" refer to S.L. 1972, ch. 134, which is codified as §§ 39-1441 to 39-

**Effective Dates.**

Section 15 of S.L. 1973, ch. 178 declared an emergency. Approved March 16, 1973.

**JUDICIAL DECISIONS**

**Constitutionality.**

The use of funds and the programs administered by the authority carry out a public purpose and hence the authority does not violate Idaho Const., Art. III which has been

interpreted as requiring public purpose in governmental functions. Board of County Comm'rs v. Idaho Health Facilities Auth., 96 Idaho 498, 531 P.2d 588 (1974).

**39-1443. Definitions.** — In this act, unless the context otherwise clearly requires, the terms used herein shall have the meanings ascribed to them as follows:

(a) "Authority" means the Idaho health facilities authority created by this act.

(b) "Bonds," "notes" or "bond anticipation notes" and "other obligations" means any bonds, notes, debentures, interim certificates or other evidences of financial indebtedness, respectively, issued by the authority pursuant to this act.

(c) "Health institution" means any:

(i) private not for profit hospital, corporation or institution, or

(ii) public hospital or institution,

authorized by law to provide or operate health facilities whether directly or indirectly through one (1) or more affiliates in the state of Idaho; and "participating health institution" means a health institution which, pursuant to the provisions of this act, shall undertake the financing and construction or acquisition of health facilities or shall undertake the refunding or refinancing of outstanding obligations as provided in and permitted by this act.

(d) "Health facilities" or "facilities," in the case of a participating health institution, means a structure or building suitable for use as a hospital, clinic, nursing home, or other health care facility, laboratory, laundry, nurses', doctors' or interns' residence, administration building, research facility, maintenance, storage or utility facility, auditorium, dining hall, food



service and preparation facility, mental and physical health care facility, dental care facility, nursing school, medical teaching facility, or other structures or facilities related to any of the foregoing or required or useful for the operation of a health facility, including, without limitation, offices, parking lots and garages and other supporting service structures, and all necessary, useful and related equipment, furnishings and appurtenances and including without limitation the acquisition, preparation and development of all lands, real and personal property, necessary or convenient as a site or sites for any of the foregoing; but shall not include such items as food, fuel, supplies or other items which are customarily considered as a current operating charge; facilities shall not include any property used or to be used primarily for sectarian instruction or study or as a place for devotional activities or religious worship.

(e) "Costs" as applied to facilities financed in whole or in part under the provisions of this act means and includes the sum total of all reasonable or necessary costs incidental to the acquisition, construction, reconstruction, repair, alteration, equipment, enlargement, improvement and extension of such facilities and acquisition of all lands, structures, real or personal property, rights, rights-of-way, franchises, easements and interest acquired, necessary, used for or useful for or in connection with a facility and all other undertakings which the authority deems reasonable or necessary for the development of a facility including, but not limited to, the cost of demolishing or removing any building or structures on land so acquired, the cost of acquiring any lands to which such building or structures may be moved, the cost of all machinery and equipment, financing charges, interest prior to and during construction, and if judged advisable by the authority, for a period after completion of such construction, the cost of financing facilities, including interest on bonds and notes issued by the authority to finance facilities; reserves for principal and interest and for extensions, enlargements, additions and improvements; including without limitation the cost of studies and surveys; the costs for land title and mortgage guaranty policies; plans, specifications, architectural and engineering services; legal, organization, marketing or other special services; financing, acquisition, demolition, construction, equipment and site development of new and rehabilitated buildings; rehabilitation, reconstruction, repair or remodeling of existing buildings and all other necessary and incidental expenses to the construction and acquisition of facilities, the financing of such construction, and acquisition and the placing of facilities in operation.

(f) "Revenues" means, with respect to facilities, the rents, fees, charges, interest, principal repayments and other income received or to be received by the authority from any source on account of such facilities.

(g) "Refinancing of outstanding obligations" means liquidation, with the proceeds of bonds or notes issued by the authority, of any indebtedness of a participating health institution incurred to finance or aid in financing a lawful purpose of such health institution not financed pursuant to this act which would constitute a facility had it been undertaken and financed by the authority, or consolidation of such indebtedness with indebtedness of the authority incurred for a facility related to the purpose for which the indebtedness of the health institution was incurred.

**History.**

1972, ch. 134, § 3, p. 286; am. 1973, ch. 178, § 2, p. 393; am. 1976, ch. 183, § 1, p. 657; am. 2004, ch. 382, § 1, p. 1143.

**STATUTORY NOTES****Compiler's Notes.**

The words "this act", in the introductory paragraph and in subsections (a), (b), (c), and (e), refer to S.L. 1972, ch. 134, which is codified as §§ 39-1441 to 39-1447, 39-1448, 39-1449, 39-1450, 39-1451, 39-1452, 39-1454 to 39-1457, 39-1458 to 39-1460.

The term "this act" in subsection (g), refers to S.L. 1973, ch. 178, which is codified as §§ 39-1442 to 39-1445, 39-1447, 39-1448A to 39-1450B, 39-1450D to 39-1453, and 39-1457.

**JUDICIAL DECISIONS**

**Cited in:** Board of County Comm'rs v. Idaho Health Facilities Auth., 96 Idaho 498, 531 P.2d 588 (1974).

**39-1444. Authority — Creation — Membership — Appointment — Terms of office — Filling vacancies and removals.** — There is hereby created an independent public body politic and corporate to be known as the "Idaho health facilities authority." Said authority is constituted a public instrumentality and the exercise by the authority of the powers conferred by this act shall be deemed and held to be the performance of an essential public function. The authority shall consist of seven (7) members to be appointed by the governor who shall be residents of the state. Not more than four (4) of said seven (7) members of the authority shall be of the same political party. At least one (1) of the members to be appointed by the governor shall be or shall have been a trustee, director, comptroller or other employee of a public or not for profit hospital knowledgeable in hospital and health care construction and financing. At least one (1) such appointed member shall be a person experienced in and having a favorable reputation for skill, knowledge and experience in the field of state and municipal finance. At least one (1) of such appointed members shall be a person experienced in and having a favorable reputation for skill, knowledge and experience in the field of health facility architecture. In making appointments the governor shall take into consideration nominees recommended to him for appointment by professional organizations of hospitals, long term care facilities, investment banking and architects. The members of the authority first appointed by the governor shall serve for terms to be designated by the governor expiring on June 30, as follows: two (2) in 1973 and 1974 and one (1) each in 1975, 1976, and 1977, respectively. Upon the expiration of the term of any appointed member his successor shall be appointed for a term of five (5) years and until his successor has been appointed and has qualified. Any member shall be eligible for reappointment. The governor shall fill any vacancy for the remainder of any unexpired term. Any member of the authority may be removed by the governor for misfeasance, malfeasance or willful neglect of duty or other cause after notice and a public hearing unless such notice or hearing shall be expressly waived in writing.



**History.**

1972, ch. 134, § 4, p. 286; am. 1973, ch. 178, § 3, p. 393.

**STATUTORY NOTES****Compiler's Notes.**

The words "this act" refer to S.L. 1972, ch. 134, which is codified as §§ 39-1441 to 39-

1447, 39-1448, 39-1449, 39-1450, 39-1451, 39-1452, 39-1454 to 39-1457, 39-1458 to 39-1460.

**JUDICIAL DECISIONS****Constitutionality.**

Since the health facility authority created by this section is a board appointed by the governor and cannot choose its own governing body, it is restricted to a narrow range of permissible public goals and a narrow means of achieving them, the authority is not a

corporation within the meaning of Idaho Const., Art. III, § 19 or Idaho Const., Art. XI, § 2, but is a public body and its creation did not violate Idaho Const., Art. III, § 19, or Idaho Const., Art. XI, § 2. Board of County Comm'rs v. Idaho Health Facilities Auth., 96 Idaho 498, 531 P.2d 588 (1974).

**39-1445. Quorum — Mode of action — Expenses.** — Four (4) members of the authority shall constitute a quorum for the purpose of conducting business and exercising its powers. Action may be taken by the authority upon the affirmative vote of at least four (4) of its members. No vacancy in the membership of the authority shall impair the right of a quorum to exercise all the rights and perform all the duties of the authority. Each meeting of the authority for any purpose whatsoever shall be open to the public. Notice of meetings shall be as provided in the by-laws of the authority. Resolutions need not be published or posted. Members of the authority shall receive no compensation for services but shall be entitled to the necessary expenses including traveling and lodging expenses incurred in the discharge of their duties. Any payments for compensation and expenses shall be paid from funds of the authority.

**History.**

1972, ch. 134, § 5, p. 286; am. 1973, ch. 178, § 4, p. 393.

**39-1446. Organization meeting — Chairman — Executive director — Surety bond and conflict of interest.** — A member of the authority designated by the governor shall call and convene the initial organizational meeting of the authority and shall serve as its chairman pro tem. At such meeting appropriate by-laws shall be presented for adoption. The by-laws may provide for the election or appointment of officers and the delegation of certain powers and duties and such other matters as the authority deems proper. At such meeting and annually thereafter the authority shall elect one (1) of its members as chairman and one (1) as vice chairman. It shall appoint an executive director or secretary and may appoint an associate executive director or associate secretary, who may but are not required to be members of the authority and who shall serve at its pleasure. They shall receive such compensation for special services as shall be fixed by the authority. The executive director or secretary or associate executive director or secretary, or other person designated by the authority,



shall keep a record of the proceedings thereof and shall be custodian of all books, documents and papers filed with the authority, the minute books or journal thereof and its official seal. Said executive director or secretary or associate executive director or associate secretary or other person, may cause copies to be made of all minutes and other records and documents of the authority and may give certificates under the official seal of the authority to the effect that such copies are true copies and all persons dealing with the authority may rely on such certificates. The authority may delegate by resolution to one (1) or more of its members or to its executive director or secretary or associate executive director or associate secretary such powers and duties as it may deem proper. The executive director or secretary shall execute a surety bond in the penal sum of one hundred thousand dollars (\$100,000) or, in lieu thereof, the chairman of the authority shall execute a blanket bond covering each member, the executive director or secretary and the employees or other officers of the authority, each surety bond to be conditioned upon the faithful performance of the duties of the office or offices covered, to be executed by a surety authorized to transact business in this state as surety. The cost of each such bond shall be paid by the authority. Notwithstanding any other law to the contrary it shall not constitute a conflict of interest for a trustee, director, officer or employee of any health institution, financial institution, investment banking firm, brokerage firm, commercial bank or trust company, architecture firm, insurance company or any other firm, person or corporation to serve as a member of the authority, provided such trustee, director, officer or employee shall abstain from deliberation, action and vote by the authority in each instance where the business affiliation of any such trustee, director, officer or employee is involved.

**History.**

1972, ch. 134, § 6, p. 286.

**39-1447. Powers.** — The authority shall have the following powers together with all powers incidental thereto or necessary for the performance thereof:

- (1) to have perpetual succession as a body politic and corporate;
- (2) to adopt by-laws for the regulation of its affairs and the conduct of its business;
- (3) to sue and be sued and to prosecute and defend, at law or in equity, in any court having jurisdiction of the subject matter and of the parties;
- (4) to have and to use a corporate seal and to alter the same at pleasure;
- (5) to maintain an office at such place or places as it may designate;
- (6) to determine the location and character of any facility to be financed under the provisions of this act to acquire, construct, reconstruct, renovate, improve, replace, maintain, repair, operate, lease as lessee or lessor and regulate the same, to enter into contracts for any and all of such purposes and for the management and operation of a facility to designate a participating health institution as its agent to determine the location and character of a facility undertaken by such participating health institution, under the provisions of this act and, as agent of the authority, to acquire, construct, reconstruct, renovate, replace, improve, maintain, repair, operate, lease as

lessee or lessor and regulate the same, and, as agent of the authority, to enter into contracts for any and all of such purposes including contracts for the management and operation of such facility;

(7) to lease to a participating health institution any or all of the facilities upon such terms and conditions as the authority shall deem proper, and to charge and collect rent therefor and to terminate any such lease upon the failure of the lessee to comply with any of the obligations thereof; and to include in any such lease, if desired, provisions that the lessee thereof shall have options to renew the term of the lease for such period or periods and at such rent and upon such terms or conditions as shall be determined by the authority or to purchase any or all of the facilities or that upon payment of all of the indebtedness incurred by the authority for the financing of such facilities the authority may convey any or all of the facilities to the lessee or lessees thereof with or without consideration;

(8) to borrow money and to issue bonds, notes, bond anticipation notes or other obligations for any of its corporate purposes and to refund the same, all as provided for in this act;

(9) generally to fix and revise from time to time and charge and collect rates, rents, fees and charges for the use of and services furnished or to be furnished by facilities or any portion thereof and to contract with any person, association, partnership, firm or corporation or other body public or private in respect thereof;

(10) to establish rules and regulations for the use of facilities and to designate a participating health institution as its agent, to establish rules and regulations for the use of the facilities undertaken or operated by such participating health institution; to employ or contract for consulting engineers, architects, attorneys, accountants, construction and financial experts, superintendents, managers and such other employees and agents as may be necessary in its judgment and to fix their compensation;

(11) to receive and accept from the federal government or the state of Idaho or any other public agency loans or grants for or in aid of the construction of facilities or any portion thereof, or for equipping the same, and to receive and accept grants, gifts or other contributions from any source;

(12) to mortgage all or any portion of the facilities and the site or sites thereof, whether then owned or thereafter acquired, for the benefit of the holders of bonds issued to finance such facilities or any portion thereof;

(13) to make loans to any participating health institution, for the cost of the facilities in accordance with an agreement between the authority and such participating health institution; provided that no such loan shall exceed the total cost of such facilities as determined by such participating health institution, and approved by the authority;

(14) to make mortgage loans or other secured or unsecured loans to a participating health institution, to refund outstanding obligations, mortgages or advances issued, made or given by such institution for the cost of its facilities including the function to issue bonds and make loans to a participating health institution, to refinance outstanding obligations and indebtedness incurred for facilities undertaken and completed prior to or after the enactment of this act and when the authority finds that such



financing is in the public interest and either alleviates the financial hardship upon the participating health institution or is in connection with other financing by the authority for such participating health institution or may be expected to result in a lesser cost of patient care and a saving to third parties, including state or federal governments, and to others who must pay for such health care, or any combination thereof;

(15) to do all things necessary and convenient to carry out the purposes of this act;

(16) to charge to and equitably apportion among participating health institutions its administrative costs and expenses incurred in the exercise of the powers and duties conferred by this act;

(17) to make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this act.

The authority shall not have the power to operate the facilities as a business other than as a lessee or lessor. Any lease of the facilities entered into pursuant to the provisions of this act shall provide for rentals adequate to pay principal and interest on such bonds as the same fall due and to create and maintain such reserves and accounts for depreciation as the authority shall determine to be necessary.

#### History.

1972, ch. 134, § 7, p. 286; am. 1973, ch. 178,

§ 5, p. 393; am. 1976, ch. 183, § 2, p. 657; am. 1985, ch. 72, § 1, p. 142.

### STATUTORY NOTES

#### Compiler's Notes.

The phrase "the enactment of this act" in subsection (14) refers to the enactment of S.L. 1972, ch. 134, which was effective July 1, 1972.

The words "this act", in subsections (6), (8), and (15) and in the last paragraph, refer to S.L. 1972, ch. 134, which is codified as §§ 39-1441 to 39-1447, 39-1448, 39-1449, 39-1450,

39-1451, 39-1452, 39-1454 to 39-1457, 39-1458 to 39-1460.

The term "this act", in subsections (16) and (17), refers to S.L. 1973, ch. 178, which is codified as §§ 39-1442 to 39-1445, 39-1447, 39-1448A to 39-1450B, 39-1450D to 39-1453, and 39-1457.

### JUDICIAL DECISIONS

#### Constitutionality.

Since the authority can act only for a limited purpose in a limited manner after finding certain conditions exist, the powers granted in this section are not lawmaking powers and there is not grant of unbridled discretion,

therefore neither Idaho Const., Art. II, § 1 nor Idaho Const., Art. III, § 1 has been violated. *Board of County Comm'rs v. Idaho Health Facilities Auth.*, 96 Idaho 498, 531 P.2d 588 (1974).

#### **39-1447A. Public securities of health institutions — Interest exchange agreements.** — (1) As used in this section:

- (a) "Authorized entity" means any of the following entities: the authority, a county that has created a hospital board under chapter 36, title 31, Idaho Code, and that owns and operates a county hospital or health facility, or a hospital district created and existing under section 39-1331, et seq., Idaho Code, that owns and operates a hospital or health facility.
- (b) "Public securities" means bonds, notes, debentures, interim certificates, bond anticipation notes, commercial paper, or other evidences of indebtedness, or lease, installment purchase, or other agreements, or



certificates of participation therein, issued or entered into by or on behalf of an authorized entity in accordance with applicable law for the purpose of financing health institutions, and including specifically leases between the authority and counties authorized by section 31-836, Idaho Code; and between the authority and hospital districts authorized by section 39-1339, Idaho Code.

(2) An authorized entity that has issued or entered into, or proposes to issue or enter into, public securities may enter into an agreement for an exchange of payments based on interest rates or for a hedge of interest rates as provided in this section if the authorized entity finds that such an agreement would be in the best interest of the authorized entity.

(3) An authorized entity may enter into an agreement to exchange payments based on interest rates or to hedge interest rates only if:

(a) The long-term debt obligations of the person or entity with whom the authorized entity enters into the agreement are rated in either of the two (2) highest rating categories of a nationally recognized rating agency, without regard to any modification of the rating; or

(b) The obligations pursuant to the agreement of the person or entity with whom the authorized entity enters into the agreement are either:

(i) Guaranteed by a person or entity whose long-term debt obligations are rated in either of the two (2) highest rating categories of a nationally recognized rating agency, without regard to any modification of the rating; or

(ii) Collateralized by obligations deposited with the authorized entity or an agent of the authorized entity which would: (A) be legal investment for such authorized entity and is in either of the two (2) highest rating categories of a nationally recognized rating agency, without regard to any modification of the rating; and (B) have a market value at least equal to the amount the person or entity would be required to pay to the authorized entity if the agreement was terminated before its final payment date, excluding any costs, legal fees or consequential damages.

(4) An authorized entity may agree, with respect to public securities that the authorized entity has issued or entered into, or proposes to issue or enter into, bearing interest at a variable rate, to pay sums equal to interest at a fixed rate or rates or at a different variable rate determined pursuant to a formula set forth in the agreement on an amount not to exceed the principal amount of the public securities with respect to which the agreement is made, in exchange for an agreement to pay sums equal to interest on the same principal amount at a variable rate determined pursuant to a formula set forth in the agreement.

(5) An authorized entity may agree, with respect to public securities that the authorized entity has issued or entered into, or proposes to issue or enter into, bearing interest at a fixed rate or rates, to pay sums equal to interest at a variable rate determined pursuant to a formula set forth in the agreement on an amount not to exceed the outstanding principal amount of the public securities with respect to which the agreement is made, in exchange for an agreement to pay sums equal to interest on the same principal amount at a fixed rate or rates set forth in the agreement.

(6) An authorized entity may, with respect to public securities that the authorized entity has issued or entered into, or proposes to issue or enter

into, bearing interest at a fixed rate or rates or at a variable rate or rates, or with respect to securities with respect to which it has entered into an interest rate exchange agreement as described in subsection (4) or (5) of this section, enter into an interest rate hedge agreement to hedge future interest rates including, without limitation, an interest rate cap agreement, an interest rate floor agreement or any combination thereof, on a specified principal sum in exchange for a sum of money or an agreement to pay sums equal to interest on the same principal amount at a fixed rate or rates or variable rate or rates set forth in the agreement.

(7) The term of an agreement entered into pursuant to this section must not exceed the term of the public securities with respect to which the agreement was made.

(8) An agreement entered into pursuant to this section is not a debt or indebtedness or liability of the authorized entity for the purposes of any limitation upon the debt or indebtedness or liability of the authorized entity or any requirement for an election with regard to the issuance of debt or indebtedness or liability that is applicable to the authorized entity.

(9) Limitations upon the rate of interest on a public security do not apply to interest paid pursuant to an agreement entered into pursuant to this section.

(10) An authorized entity which has entered into an agreement pursuant to this section with respect to those public securities may treat the amount or rate of interest on the public securities as the amount or rate of interest payable after giving effect to the agreement for the purpose of calculating:

- (a) Rates and charges of a revenue-producing enterprise whose revenues are pledged to or used to pay public securities of the authorized entity;
- (b) Statutory requirements concerning revenue coverage that are applicable to public securities of the authorized entity;
- (c) Tax levies to pay debt service on public securities of the authorized entity; and
- (d) Any other amounts which are based upon the rate of interest of public securities of the authorized entity.

(11) Subject to covenants applicable to the public securities, any payments required to be made by the authorized entity under the agreement may be made from money pledged to pay debt service on the public securities with respect to which the agreement was made or from any other legally available source.

#### History.

I.C., § 39-1447A, as added by 2005, ch. 270,  
§ 1, p. 832.

**39-1448. Acquisition of property.** — The authority is authorized and empowered directly or by or through a participating health institution, as its agent, to acquire by purchase, lease, gift, devise or otherwise such lands, structures, property, real or personal, rights of way, franchises, easements, and other interests in lands, including lands lying under water and riparian rights which are located within or without the state as it may deem necessary or convenient for the construction or acquisition or operation of



facilities but upon such terms as may be considered by the authority to be reasonable, and to take title thereto in the name of the authority or in the name of such participating health institution, as its agent.

**History.**

1972, ch. 134, § 8, p. 286.

**39-1448A. Notes.** — The authority is authorized from time to time to issue its negotiable notes for any corporate purpose, including the payment of all or any part of the cost of any facility, and renew from time to time any notes by the issuance of new notes, whether the notes to be renewed have or have not matured. The authority may issue notes partly to renew notes or to discharge other obligations then outstanding and partly for any other purpose. The notes may be authorized, sold, executed and delivered in the same manner as bonds. Any resolution or resolutions authorizing notes of the authority or any issue thereof may contain any provisions which the authority is authorized to include in any resolution or resolutions authorizing bonds of the authority or any issue thereof, and the authority may include in any notes any terms, covenants or conditions which it is authorized to include in any bonds. All such notes shall be payable from the proceeds of bonds or renewal notes or from the revenues of the authority or other moneys available therefor and not otherwise pledged, subject only to any contractual rights of the holders of any of its notes or other obligations then outstanding.

**History.**

I.C., § 39-1448A, as added by 1973, ch. 178,  
§ 6, p. 393.

**STATUTORY NOTES**

**Effective Dates.**

Section 15 of S.L. 1973, ch. 178 declared an emergency. Approved March 16, 1973.

**39-1449. Bonds.** — (a) The authority is authorized from time to time to issue its bonds in such principal amount as the authority shall determine for the purpose of financing all or a part of the cost of any facilities authorized hereby or for the refinancing of outstanding obligations. In anticipation of the sale of such bonds, the authority may issue bond anticipation notes and may renew the same from time to time. Such notes shall be paid from any revenues of the authority or other moneys available therefor and not otherwise pledged, or from the proceeds of sale of the bonds of the authority in anticipation of which they were issued. The notes shall be issued in the same manner as bonds. Such notes and the resolution or resolutions authorizing the same may contain any provisions, conditions or limitations which a bond resolution of the authority may contain.

(b) The bonds may be issued as serial bonds or as term bonds or a combination of both types. All bonds issued by the authority shall be payable solely out of the revenues and receipts derived from the leasing, mortgaging or sale by the authority of the facilities concerned or of any part thereof as



may be designated in the resolutions of the authority under which the bonds shall be authorized to be issued or as may be designated in a trust indenture authorized by the authority, which such trust indenture shall name a bank or trust company within or without the state of Idaho as trustee or from other moneys available therefor and not otherwise pledged. Such bonds may be executed and delivered by the authority at any time and from time to time, may be in such form and denominations and of such terms and maturities, may be in fully registered form or in bearer form registerable either as to principal or interest or both, may bear such conversion privileges and be payable in such instalments and at such time or times not exceeding forty (40) years from the date thereof, may be payable at such place or places whether within or without the state of Idaho, may bear interest at such rate or rates per annum as shall be determined by the authority and without regard to any interest rate limitation appearing in any other law, payable at such time or times and at such place or places and evidenced in such manner, may be executed by such officers of the authority, either manually or by facsimile, and coupon bonds shall have attached thereto interest coupons bearing the facsimile signature of an authorized officer of the authority and may contain such provisions not inconsistent herewith, all as shall be provided in the resolutions of the authority whereunder the bonds shall be authorized to be issued or as shall be provided in a trust indenture authorized by the authority. Notwithstanding any provision of this section to the contrary, in the case of obligations maturing not later than one (1) year from the date of issuance thereof, the authority may authorize the executive director, associate executive director or any officer of the authority to fix principal amounts, maturity dates, interest rates, and purchase prices of any particular issue of such short-term obligations, subject to such limitations as to maximum term, maximum principal amount outstanding, and maximum interest rates as the authority shall prescribe by resolution. Any such authorization shall remain effective for the period of time designated in the resolution, regardless of whether the composition of the authority changes in the interim.

(c) If deemed advisable by the authority there may be retained in the resolutions or the trust indenture under which any bonds of the authority are authorized to be issued an option to redeem all or any part thereof as may be specified in such resolutions or in such trust indenture, at such price or prices and after such notice or notices and on such terms and conditions as may be set forth in such resolutions or in such trust indenture, and as may be briefly recited on the face of the bonds, but nothing herein contained shall be construed to confer on the authority the right or option to redeem any bonds except as may be provided in the resolutions or in such trust indenture under which they shall be issued.

(d) The bonds or notes of the authority may be sold at public or private sale for such price or prices and in such manner and from time to time as may be determined by the authority, and the authority may pay all expenses, premiums and commissions which it may deem necessary or advantageous in connection with the issuance thereof. The power to fix the date of sale of bonds and notes, to receive bids or proposals, to award and sell bonds and notes, and to take all other necessary action to sell and deliver

bonds and notes may be delegated to the executive director of the authority by resolution of the authority. Pending preparation of the definitive bonds, the authority may issue interim receipts or certificates which shall be exchanged for such definitive bonds.

(e) Issuance by the authority of one (1) or more series of bonds for one (1) or more purposes shall not preclude it from issuing other bonds in connection with the same facilities or any other facilities or any other purpose hereunder, but the resolutions or trust indenture whereunder any subsequent bonds may be issued shall recognize and protect any prior pledge or mortgage made for any prior issue of bonds. Any bonds of the authority at any time outstanding may at any time and from time to time be refunded by the authority by the issuance of its bonds for such purpose in such amount as the authority may deem necessary and, if deemed advisable by the authority, for the additional purpose of paying all or any part of the cost of constructing and acquiring additions, improvements, extensions or enlargements of a facility or any portion thereof.

Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded thereby, or by the exchange of the refunding bonds for the bonds to be refunded thereby with the consent of the holders of the bonds so to be refunded, and regardless of whether or not the bonds to be refunded were issued in connection with the same facilities or separate facilities or for any other purpose hereunder, and regardless of whether or not the bonds proposed to be refunded shall be payable on the same date or different dates or shall be due serially or otherwise. The proceeds of any such bonds issued for the purpose of refunding outstanding bonds may, in the discretion of the authority, be applied to the purchase or retirement at maturity or redemption of such outstanding bonds either on their earliest or any subsequent redemption date or upon the purchase or at the maturity thereof and may, pending such application, be placed in escrow to be applied to such purchase or retirement at maturity or redemption on such date as may be determined by the authority. Any such escrowed proceeds, pending such use, may be invested and reinvested in obligations determined by the authority. The interest, income and profits, if any, earned or realized on any such investment may also be applied to the payment of the outstanding bonds or notes to be so refunded, to the payment of principal or interest on the refunding bonds or may be used by the authority in any lawful manner. After the terms of the escrow have been fully satisfied and carried out, any balance of such proceeds and interest, income and profits, if any, earned or realized on the investments thereof may be returned to the authority for use by it in any lawful manner. The portion of the proceeds of any such bonds issued for the additional purpose of paying all or any part of the cost of constructing and acquiring additions, improvements, extensions or enlargements of a facility may be invested and reinvested in obligations determined by the authority. The interest, income and profits, if any, earned or realized on such investment may be applied to the payment of all or any part of such cost or may be used by the authority in any lawful manner. All such bonds shall be subject to the provisions of this act in the same manner and to the



same extent as other bonds issued pursuant to this act. All bonds and the interest coupons applicable thereto are hereby made and shall be construed to be negotiable instruments within the meaning of and for all the purposes of article 8, uniform commercial code, subject only to the provisions of such bonds, notes or other obligations for registration.

**History.** § 7, p. 393; am. 1985, ch. 72, § 2, p. 142; am. 1972, ch. 134, § 9, p. 286; am. 1973, ch. 178, 2000, ch. 125, § 1, p. 296.

STATUTORY NOTES

**Compiler's Notes.** 39-1448A to 39-1450B, 39-1450D to 39-1453, and 39-1457.  
The term "this act", near the end of this section, refers to S.L. 1973, ch. 178, which is codified as §§ 39-1442 to 39-1445, 39-1447, Article 8 of the Uniform Commercial Code is compiled as § 28-8-101 et seq.

**39-1450. Security for bonds and notes.** — The principal of and interest on any bonds or notes issued by the authority may be secured by a pledge of, or security interest in, the revenues, rentals and receipts out of which the same may be made payable or from other moneys available therefor and not otherwise pledged or used as security and may be secured by a trust indenture or mortgage or deed of trust (including assignment of leases or other contract rights of the authority thereunder) covering all or any part of the facilities from which the revenues, rentals or receipts so pledged or used as security may be derived, including any enlargements of and additions to any such facilities thereafter made. The resolution under which the bonds are authorized to be issued and any such trust indenture, mortgage or deed of trust may contain any agreements and provisions which shall be a part of the contract with the holders of the bonds or notes to be authorized as to:

- (a) Pledging or providing a security interest in all or any part of the revenues of a facility or any revenue-producing contract or contracts made by the authority with any individual, partnership, corporation or association or other body, public or private, to secure the payment of the bonds or notes or of any particular issue of bonds, subject to such agreements with noteholders or bondholders as may then exist;
- (b) Respecting the maintenance of the properties covered thereby;
- (c) The fixing and collection of rents, fees, and other charges to be charged, and the amounts to be raised in each year thereby, and the use and disposition of the revenues;
- (d) The setting aside, creation and maintenance of special and reserve funds and sinking funds and the use and disposition of the revenues;
- (e) Limitations on the right of the authority or its agent to restrict and regulate the use of facilities;
- (f) Limitations on the purpose to which the proceeds of sale of any issue of bonds or notes then or thereafter to be issued may be applied and pledging or providing a security interest in such proceeds to secure the payment of the bonds or notes or any issue of the bonds or notes;
- (g) Limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured and the refunding of outstanding bonds;



(h) The procedure, if any, by which the terms of any contract with bondholders or noteholders may be amended or abrogated, the amount of bonds or notes the holders of which must consent thereto, and the manner in which such consent may be given;

(i) Limitations on the amount of moneys derived from a facility to be expended for operating, administrative or other expenses of the authority;

(j) Defining the acts or omissions to act which shall constitute a default in the duties of the authority to holders of its obligations and providing the rights and remedies of such holders in the event of a default;

(k) The mortgaging of a facility and the site thereof for the purpose of securing the bondholders or noteholders; and

(l) Such other additional covenants, agreements, and provisions as are judged advisable or necessary by the authority for the security of the holders of such bonds or notes.

Any pledge made by the authority shall be valid and binding from the time when the pledge is made; the revenues, moneys, or property so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded. Each pledge, agreement, lease, indenture, mortgage and deed of trust made for the benefit or security of any of the bonds of the authority shall continue effective until the principal of and interest on the bonds for the benefit of which the same were made shall have been fully paid or provision for such payment duly made. In the event of default in such payment or in any agreements of the authority made as a part of the contract under which the bonds were issued, whether contained in the resolutions authorizing the bonds or in any trust indenture, mortgage or deed of trust executed as security therefor, said payment or agreement may be enforced by suit, mandamus, the appointment of a receiver in equity or by foreclosure of any mortgage and deed of trust, or any one (1) or more of said remedies.

In addition to the foregoing, bonds of the authority may be secured by a pooling of leases whereby the authority may assign its rights, as lessor, and pledge rents under two (2) or more leases of the facilities with two (2) or more participating health institutions, as lessees respectively, upon such terms as may be provided for in the resolutions of the authority or as may be provided for in a trust indenture authorized by the authority.

(m) Notwithstanding any other provision of chapter 9, title 28, Idaho Code, to the contrary, this section expressly governs the creation, perfection, priority and enforcement of a security interest created by the Idaho health facilities authority.

**History.**

1972, ch. 134, § 10, p. 286; am. 1973, ch.

178, § 8, p. 393; am. 1976, ch. 183, § 3, p. 657; am. 2002, ch. 107, § 7, p. 290.

STATUTORY NOTES

**Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

**39-1450A. Personal liability.** — Neither the members of the authority nor any person executing the bonds or notes shall be liable personally on the bonds or notes or be subject to any personal liability or accountability by reason of the issuance thereof.

**History.**

I.C., § 39-1450A, as added by 1973, ch. 178, § 9, p. 393.

**39-1450B. Purchase.** — The authority shall have power out of any funds available therefor to purchase its bonds or notes. The authority may hold, pledge, cancel or resell such bonds or notes, subject to and in accordance with agreements with bondholders or noteholders.

**History.**

I.C., § 39-1450B, as added by 1973, ch. 178, § 9, p. 393; am. 1976, ch. 183, § 4, p. 657.

**39-1450C. Procedure before issuance of bonds. [Repealed.]**

STATUTORY NOTES

**Compiler's Notes.**

This section, which comprised I.C., § 39-1450C, as added by 1973, ch. 178, § 9, p. 393, was repealed by S.L. 1985, ch. 72, § 3.

**39-1450D. Trust agreement to secure bonds.** — In the discretion of the authority any bonds issued under this act may be secured by a trust agreement by and between the authority and a corporate trustee or trustees, which may be any trust company or bank having the powers of a trust company within or without the state of Idaho. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign the revenues to be received or proceeds of any contract or contracts pledged and may convey or mortgage the project or any portion thereof. Such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper, and not in violation of law, including particularly such provisions as have been specifically authorized to be included in any resolution or resolutions of the authority authorizing bonds thereof. Any bank or trust company incorporated under the laws of this state, which may act as depository of the proceeds of bonds or of revenues or other moneys, may furnish such indemnifying bonds or pledge such securities as may be required by the authority. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee or trustees, and may restrict the individual right of action by bondholders. In addition, any such trust agreement or resolution may contain such other provisions as the authority may deem reasonable and



proper for the security of the bondholders. All expenses incurred in carrying out such trust agreement or resolution may be treated as a part of the cost of the operation of a facility.

**History.**

I.C., § 39-1450D, as added by 1973, ch. 178,

§ 9, p. 393; am. 1976, ch. 183, § 5, p. 657; am. 2000, ch. 125, § 2, p. 296.

**STATUTORY NOTES****Compiler's Notes.**

The term "this act" in this section refers to S.L. 1973, ch. 178, which is codified as §§ 39-

1442 to 39-1445, 39-1447, 39-1448A to 39-1450B, 39-1450D to 39-1453, and 39-1457.

**39-1451. Payment of bonds—Nonliability of state.** — Bonds and notes issued by the authority shall not constitute or become an indebtedness, or a debt or liability of the state, the legislature thereof, or of any county, city, town, township, board of education or school district, or other subdivision of the state, or of any other political subdivision or body corporate and politic of or municipality within the state and neither the state, the legislature thereof, nor any county, city, town, township, board of education or school district or other subdivision of the state shall be liable thereon nor shall such bonds or notes constitute the giving, pledging or loaning of the faith and credit of the state, the legislature thereof, or of any county, city, town, township, board of education or school district, or other subdivision of the state, or of any other political subdivision or body corporate and politic of or municipality within the state, but shall be payable solely from the funds herein provided therefor. The issuance of bonds or notes under the provisions of this act shall not, directly or indirectly or contingently, obligate the state or any political subdivision thereof nor empower the authority, to levy or collect any form of taxes or assessments therefor or to create any indebtedness payable out of taxes or assessments or make any appropriation for their payment and such appropriation or levy is prohibited. Nothing in this section contained shall prevent or be construed to prevent the authority from pledging its full faith and credit or the full faith and credit of a participating health institution to the payment of bonds or notes authorized pursuant to this act. Nothing in this act shall be construed to authorize the authority to create a debt of the state within the meaning of the constitution or statutes of Idaho or authorize the authority to levy or collect taxes or assessments and all bonds issued by the authority pursuant to the provisions of this act are payable and shall state that they are payable solely from the funds pledged for their payment in accordance with the resolution authorizing their issuance or in any trust indenture or mortgage or deed of trust executed as security therefor and are not a debt or liability of the state of Idaho. The state shall not in any event be liable for the payment of the principal of or interest on any bonds of the authority or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever which may be undertaken by the authority. No breach of any such pledge, mortgage, obligation or agreement shall impose any pecuniary liability upon the state or any charge upon its general credit or against its taxing power.



All expenses incurred in carrying out this act shall be payable solely from funds provided under the authority of this act and no liability or obligation shall be incurred by the authority beyond the extent to which moneys shall have been provided under this act.

**History.**

1972, ch. 134, § 11, p. 286; am. 1973, ch.

178, § 10, p. 393; am. 1976, ch. 183, § 6, p. 657.

**STATUTORY NOTES****Compiler's Notes.**

The words "this act", in the first paragraph, refers to S.L. 1972, ch. 134, which is codified as §§ 39-1447, 39-1448, 39-1449, 39-1450, 39-1451, 39-1452, 39-1454 to 39-1457, 39-1458 to 39-1460.

The term "this act" in the second paragraph refers to S.L. 1973, ch. 178, which is codified as §§ 39-1442 to 39-1445, 39-1447, 39-1448A to 39-1450B, 39-1450D to 39-1453, and 39-1457.

**JUDICIAL DECISIONS****Constitutionality.**

Since the authority has no power to tax or encumber the assets of the body creating it and since the only funds obligated to satisfy the payments due on the bonds and notes issued are those funds provided under this

section and § 39-1453, the obligations created under §§ 39-1441 to 39-1460 are not violative of the restrictions of Idaho Const., Art. VIII. *Board of County Comm'rs v. Idaho Health Facilities Auth.*, 96 Idaho 498, 531 P.2d 588 (1974).

**39-1452. Exemption from taxation — Securities law.** — The authority is hereby declared to be performing a public function for the benefit of the people of the state for the improvement of their health and living conditions and to be a public instrumentality of the state. Accordingly, the income or other revenues of the authority, and all properties at any time owned by the authority, and any bonds, notes, or other obligations issued under this act, their transfer and income therefrom, including any profit made on the sale thereof, shall be exempt at all times from all taxation in the state of Idaho. Also, bonds issued by the authority shall be exempt from the uniform securities act, chapter 14, title 30, Idaho Code, or any amendments thereto.

**History.**

1972, ch. 134, § 12, p. 286; am. 1973, ch. 178, § 11, p. 393; am 2004, ch. 45, § 5, p. 169.

**STATUTORY NOTES****Compiler's Notes.**

The term "this act" in this section refers to S.L. 1973, ch. 178, which is codified as §§ 39-

1442 to 39-1445, 39-1447, 39-1448A to 39-1450B, 39-1450D to 39-1453, and 39-1457.

**JUDICIAL DECISIONS****Constitutionality.**

The tax exemption given by this section is necessary and just within the meaning of Idaho Const., Art. VII, § 5 since the exemption favors no private party at the expense of another, since it increases the attractiveness of the authority's bonds in the marketplace and reduces the interest expense in financing

public and private nonprofit health facilities and since the public as a whole are the beneficiaries of the improved health care made possible by the sale of the bonds and the proceeds devoted to improving or building medical facilities. *Board of County Comm'rs v. Idaho Health Facilities Auth.*, 96 Idaho 498, 531 P.2d 588 (1974).

**39-1453. Rents and charges.** — The authority is authorized to fix, revise, charge and collect rates, rents, fees and charges for the use of and for the services furnished or to be furnished by each facility and to contract with any person, partnership, association or corporation, or other body, public or private, in respect thereof. Such rates, rents, fees and charges shall be fixed and adjusted in respect of the aggregate of rates, rents, fees and charges from such facility so as to provide funds sufficient with other revenues or moneys available therefor, if any, to pay the cost of maintaining, repairing and operating the facility and each and every portion thereof, to the extent that the payment of such cost has not otherwise been adequately provided for, to pay the principal of and the interest on outstanding bonds or notes of the authority issued in respect of such facility as the same shall become due and payable, and to create and maintain reserves required or provided for in any resolution authorizing, or trust agreement securing, such bonds or notes of the authority. Such rates, rents, fees and charges shall not be subject to supervision or regulation by any department, commission, board, body, bureau or agency of this state other than the authority. A sufficient amount of the revenues derived in respect of a facility, except such part of such revenues as may be necessary to pay the cost of maintenance, repair and operation and to provide reserves and for renewals, replacements, extensions, enlargements and improvements as may be provided for in the resolution authorizing the issuance of any bonds or notes of the authority or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or trust agreement in a sinking or other similar fund which is hereby pledged to, and charged with, the payment of the principal of and the interest on such bonds or notes as the same shall become due, and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made; the rates, rents, fees and charges and other revenues or other moneys so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement nor any other agreement nor any lease by which a pledge is created need be filed or recorded except in the records of the authority. The use and disposition of moneys to the credit of such sinking or other similar fund shall be subject to the resolution authorizing the issuance of such bonds or notes or of such trust agreement. Except as may otherwise be provided in such resolution or such trust agreement, such sinking or other similar fund may be a fund for all such bonds or notes issued to finance facilities at a particular health institution without distinction or priority of one over another, provided the authority in any such resolution or trust agreement may provide that such sinking or other similar fund shall be the fund for a particular facility at a health institution and for the bonds issued to finance a particular facility and may, additionally, permit and provide for the issuance of bonds having a subordinate lien in respect of the security herein authorized to other bonds of the



authority, and, in such case, the authority may create separate sinking or other similar funds in respect of such subordinate lien bonds.

**History.**

1973, ch. 178, § 13, p. 393.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-1453, which comprised 1972, ch. 134, § 13, p. 286, was repealed by S.L. 1973, ch. 178, § 12.

**JUDICIAL DECISIONS**

**Constitutionality.**

Since the authority has no power to tax or encumber the assets of the body creating it and since the only funds obligated to satisfy the payments due on the bonds and notes issued are those funds provided for under this

section and § 39-1451, the obligations created under §§ 39-1441 to 39-1460 are not violative of the restrictions of Idaho Const., Art. 8. Board of County Comm'rs v. Idaho Health Facilities Auth., 96 Idaho 498, 531 P.2d 588 (1974).

**39-1453A. Fees.** — All expenses of the authority incurred in carrying out the provisions of this act shall be payable solely from funds provided under the authority of this act and no liability shall be incurred by the authority beyond the extent to which moneys shall have been provided under this act, except that for the purposes of meeting the necessary expenses of initial organization and operation until such date as the authority derives moneys from funds provided hereunder, the authority shall be empowered to borrow moneys as may be required for such necessary expenses of organization and operation. Such borrowed moneys shall be repaid within a reasonable time after the authority receives funds provided for under this act. When any application is made to the authority by any participating health institution for financial assistance to provide for its facilities, such application shall be accompanied by an "initial planning service fee" in an amount determined by the authority. Such initial planning service fees shall be included in the cost of the facilities to be financed and shall not be refundable by the authority whether or not any such application is approved. In addition to such initial fee, an "annual planning service fee" shall be paid to the authority by each participating health institution in an amount determined by the authority. Such annual planning service fee shall be paid on said dates or in installments as may be satisfactory to the authority. It is anticipated such fees shall be used for; (i) necessary expenses to determine the need of facilities in the area concerned and to that end the authority may utilize recognized voluntary and official health planning organizations and agencies at local, regional and state levels as well as the state statutory bodies having health planning responsibilities; (ii) necessary administrative expenses; and (iii) reserves for anticipated future expenses. In addition the authority may, for a negotiated fee, retain the services of any other public or private person, firm, partnership, association or corporation for the furnishing of services and data for use by the authority in determining the need and location of any such facilities for which application is being made or for such other services or surveys as the authority deems necessary to carry out the purposes of this act.



**History.**

I.C., § 39-1453A, as added by 1976, ch. 183,  
§ 7, p. 657.

**STATUTORY NOTES****Compiler's Notes.**

The term "this act" in this section refers to  
S.L. 1976, ch. 183, which is codified as §§ 39-

1443, 39-1447, 39-1450, 39-1450B, 39-1450D,  
39-1451, 39-1453A, 39-1454, and 39-1457 to  
39-1457B.

**39-1454. Conveyance of title to institution.** — When the principal of (an) and interest on bonds issued by the authority to finance the cost of facilities or to refinance outstanding indebtedness of one or more participating health institutions, including any refunding bonds issued to refund and refinance such bonds, have been fully paid and retired or when adequate provision has been made to fully pay and retire the same, and all other conditions of the resolution, the lease, the trust indenture and the mortgage or deed of trust or any other form of security arrangement, if any, authorizing and securing the same have been satisfied and the lien of such mortgage or deed of trust or any other form of security arrangement has been released in accordance with the provisions thereof, the authority shall promptly do all things and execute such deeds and conveyances and other documents as are necessary and required to convey its right, title and interest in such facilities so financed, and any other facilities mortgaged or subject to deed of trust or any other form of security arrangement to secure the bonds, to such participating health institution or institutions.

**History.**

1972, ch. 134, § 14, p. 286; am. 1976, ch.  
183, § 8, p. 657.

**STATUTORY NOTES****Compiler's Notes.**

Near the beginning of the section, the word

"an" was enclosed in parentheses by the compiler as surplusage.

**39-1455. Powers not restricted — Law complete in itself.** — Neither this act nor anything herein contained shall be construed as a restriction or limitation upon any powers which the authority might otherwise have under any laws of this state, but shall be construed as cumulative of any such powers. No proceedings, referendum, notice or approval shall be required for the creation of the authority or the issuance of any bonds or any instrument as security therefor, except as herein provided, any other law to the contrary notwithstanding; provided, that nothing herein shall be construed to deprive the state and its governmental subdivisions of their respective police powers over properties of the authority, or to impair any power thereover of any official or agency of the state and its governmental subdivisions which may be otherwise provided by law.

**History.**

1972, ch. 134, § 15, p. 286.

STATUTORY NOTES

**Compiler's Notes.**

The words "this act" refer to S.L. 1972, ch. 134, which is codified as §§ 39-1441 to 39-1447, 39-1448, 39-1449, 39-1450, 39-1451, 39-1452, 39-1454 to 39-1457, 39-1458 to 39-1460.

**39-1456. Facilities governed by laws of locality.** — All facilities shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which any such facilities are to be situated.

**History.**

1972, ch. 134, § 16, p. 286.

**39-1457. Investment of funds.** — The authority may invest the proceeds from the sale of a series of obligations or any funds related to the series in such securities and other investments, whether or not any such investment or reinvestment is authorized under any other law of the state, as may be provided in the proceedings under which the series of obligations are authorized to be issued. The authority may invest any other funds in obligations of the federal government, the state or of any municipality thereof or obligations of agencies of the federal government; in bonds, notes, certificates of indebtedness, treasury bills or other securities constituting direct obligations of the United States of America; in certificates of deposit or time deposits constituting direct obligations of any bank in Idaho; provided, however, that investments may be made only in those certificates of deposit or time deposits in banks which are insured by the federal deposit insurance corporation, if then in existence, and may exceed the maximum of such insurance; or in short term discount obligations of the federal national mortgage association. Any such securities may be purchased at the offering or market price thereof at the time of such purchase. The authority may invest any other funds with such maturities as the authority shall determine provided that such maturities are on a date or dates prior to the time when, in the judgment of the authority, the funds so invested will be required for expenditure. The express judgment of the authority as to the time when any such funds will be required for expenditure or be redeemable is final and conclusive.

**History.**

1972, ch. 134, § 17, p. 286; am. 1973, ch. 178, § 14, p. 393; am. 1976, ch. 183, § 9, p. 657; am. 1985, ch. 72, § 4, p. 142.

STATUTORY NOTES

**Compiler's Notes.**

The federal national mortgage association (fannie mae), referred to at the end of the second sentence, was founded in 1938 to expend the secondary mortgage market. See <http://www.fanniemae.com>.

**Effective Dates.**

Section 15 of S.L. 1973, ch. 178 declared an emergency. Approved March 16, 1973.

Section 5 of S.L. 1985, ch. 72 declared an emergency. Approved March 13, 1985.

**39-1457A. Trust funds.** — All moneys received pursuant to the authority of this act whether as proceeds from the sale of bonds, notes or other

obligations or as revenues or receipts shall be deemed to be trust funds to be held and applied solely as provided in this act. Any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes of this act, subject to such regulations as this act and the resolution authorizing the bonds, notes or other obligations of any issue or the trust agreement securing such obligations shall provide.

**History.**

I.C., § 39-1457A, as added by 1976, ch. 183,  
§ 10, p. 657.

**STATUTORY NOTES**

**Compiler's Notes.**

The term "this act" in this section refers to S.L. 1976, ch. 183, which is codified as §§ 39-

1443, 39-1447, 39-1450, 39-1450B, 39-1450D, 39-1451, 39-1453A, 39-1454, and 39-1457 to 39-1457B.

**39-1457B. Agreement of the state.** — The state does hereby pledge to and agree with the holders of any bonds, notes and other obligations issued under this act, and with those parties who may enter into contracts with the authority pursuant to the provisions of this act, that the state will not limit, alter, restrict or impair the rights hereby vested in the authority to acquire, construct, reconstruct, maintain and operate any facility as defined in this act or to establish, revise, charge and collect rates, rents, fees and other charges as may be convenient or necessary to produce sufficient revenues to meet the expenses of maintenance and operation thereof and to fulfill the terms of any agreements made with the holders of bonds, notes or other obligations authorized and issued by this act, and with the parties who may enter into contracts with the authority pursuant to this act, or in any way impair the rights or remedies of the holders of such bonds, notes or other obligations of such parties until the bonds, notes and such other obligations, together with interest thereon, with interest on any unpaid installment of interest and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged and such contracts are fully performed on the part of the authority. Nothing in this act precludes such limitation or alteration if and when adequate provision is made by law for the protection of the holders of such bonds, notes or other obligations of the authority or those entering into such contracts with the authority. The authority is authorized to include this pledge and undertaking for the state in such bonds, notes or other obligations and in such contracts.

**History.**

I.C., § 39-1459B, as added by 1976, ch. 183,

§ 11, p. 657; am. and redesign. 2005, ch. 25,  
§ 59, p. 82.

**STATUTORY NOTES**

**Compiler's Notes.**

This section was enacted as § 39-1459B, but was redesignated as § 39-1457B as that seemed the intended designation suggested

by the subject matter and there being no § 39-1459A and § 10 of S.L. 1976, ch. 183 added § 39-1457A. The designation change was made permanent by S.L. 2005, ch. 25.



The term “this act” in this section refers to S.L. 1976, ch. 183, which is codified as §§ 39-1443, 39-1447, 39-1450, 39-1450B, 39-1450D, 39-1451, 39-1453A, 39-1454, and 39-1457 to 39-1457B.

**Effective Dates.**  
Section 12 of S.L. 1976, ch. 183 declared an emergency. Approved March 19, 1976.

**39-1458. Bonds eligible for investment.** — The state and all counties, cities, villages, incorporated towns and other municipal corporations, political subdivisions and public bodies, and public officers of any thereof, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, insurance companies and associations, and all executors, administrators, guardians, trustees and other fiduciaries may legally invest any sinking funds, moneys or other funds belonging to them or within their control in any bonds issued pursuant to this act.

**History.**  
1972, ch. 134, § 18, p. 286.

STATUTORY NOTES

**Compiler’s Notes.** 1447, 39-1448, 39-1449, 39-1450, 39-1451, 39-1452, 39-1454 to 39-1457, 39-1458 to 39-1460.  
The words “this act” refer to S.L. 1972, ch. 134, which is codified as §§ 39-1441 to 39-

**39-1459. Exemption from construction and bidding requirements for public buildings.** — The facilities are not subject to any requirements relating to public buildings, structures, grounds, works or improvements imposed by the laws of this state or any other similar requirements which may be lawfully waived by this section and any requirement of competitive bidding or other restriction imposed on the procedure for award of contracts for such purpose or the lease, sale or other disposition of property of the authority is not applicable to any action taken under authority of this act.

**History.**  
1972, ch. 134, § 19, p. 286.

STATUTORY NOTES

**Compiler’s Notes.** 1447, 39-1448, 39-1449, 39-1450, 39-1451, 39-1452, 39-1454 to 39-1457, 39-1458 to 39-1460.  
The words “this act” refer to S.L. 1972, ch. 134, which is codified as §§ 39-1441 to 39-

**39-1460. Powers in addition to those granted by other laws—Severability.** — The powers conferred by this act shall be in addition and supplementary to, and the limitations by this act shall not affect the powers conferred by any other law except as herein provided. Facilities may be acquired, purchased, constructed, reconstructed, improved, bettered and extended and bonds may be issued under this act for said purposes notwithstanding that any other law may provide for the acquisition, purchase, construction, reconstruction, improvement, betterment and extensions of like facilities, or the issuance of bonds for like purposes, and

without regard to the requirements, restrictions, limitations or other provisions contained in any other law. If any one or more sections or provisions of this act, or the application thereof to any person or circumstance, shall ever be held by any court of competent jurisdiction to be invalid, the remaining provisions of this act and the application thereof to persons or circumstances other than those to which it is held to be invalid, shall not be affected thereby, it being the intention of this general assembly to enact the remaining provisions of this act notwithstanding such invalidity.

**History.**

1972, ch. 134, § 20, p. 286.

**STATUTORY NOTES**

**Compiler's Notes.**

The words "this act" refer to S.L. 1972, ch. 134, which is codified as §§ 39-1441 to 39-

1447, 39-1448, 39-1449, 39-1450, 39-1451, 39-1452, 39-1454 to 39-1457, 39-1458 to 39-1460.

**CHAPTER 15**

**CARE OF BIOLOGICAL PRODUCTS**

**SECTION.**

39-1501. Vaccines, antitoxins and other sera  
— Storage pending sale —  
Date of sale.

**SECTION.**

39-1502. Jurisdiction of director.  
39-1503. Penalty for violation.

**39-1501. Vaccines, antitoxins and other sera — Storage pending sale — Date of sale.** — It shall be the duty of any person, persons, firm, corporation, or other person, having for sale any biological products such as smallpox vaccine, diphtheria antitoxin, typhoid vaccine, antirabic vaccine, or any other sera used in the prevention or treatment of human ills, and which deteriorates with age, or when exposed to heat or light, or freezing, to keep same stored in a proper container where the temperature shall be equalized at not more than sixty degrees (60°) F., nor less than fifty degrees (50°) F., and not exposed to the light: providing, further, that no such products as mentioned in this chapter shall be offered for sale or dispensed in any manner unless they are well within the date stamped on said package.

**History.**

1921, ch. 192, § 1, p. 393; I.C.A., § 38-1001.

**39-1502. Jurisdiction of director.** — It shall be the duty of the director of the department of health and welfare to see that this chapter is complied with.

**History.**

1921, ch. 192, § 2, p. 393; I.C.A., § 38-1002;  
am. 1974, ch. 23, § 124, p. 633.

STATUTORY NOTES

**Cross References.**

Enforcement of food and drug laws, § 37-113 et seq.

act should be in full force and effect on and after July 1, 1974.

**Effective Dates.**

Section 182 of S.L. 1974, ch. 23 provided the

**39-1503. Penalty for violation.** — Upon conviction of failure to comply with the provisions of this chapter, said person, persons, firm or corporation shall be deemed guilty of a misdemeanor.

**History.**

1921, ch. 192, § 3, p. 393; I.C.A., § 38-1003.

STATUTORY NOTES

**Cross References.**

Penalty for misdemeanor when not otherwise provided, § 18-113.

CHAPTER 16

FOOD ESTABLISHMENT ACT

SECTION.

- 39-1601. Statement of purpose.
- 39-1602. Definitions.
- 39-1603. Powers and duties of board.
- 39-1604. License requirements for food establishments.

SECTION.

- 39-1605. Inspections.
- 39-1606. Criminal and civil proceedings.
- 39-1607. License fee.
- 39-1608. Food safety fund. [Repealed.]
- 39-1609 — 39-1613. [Repealed.]

**39-1601. Statement of purpose.** — The legislative intent of this chapter is to protect the public health by establishing standards and provisions for the regulation of food establishments; by delegating authority to the board of health and welfare to adopt rules covering the health and sanitation aspects of food establishments, to collect a fee to cover a portion of the cost of the food safety inspection program and by delegating the authority to the director of the department of health and welfare to enforce the provisions of this chapter. This chapter is enacted to ensure that consumers are not exposed to adverse health conditions arising out of the operation of food establishments.

**History.**

I.C., § 39-1601, as added by 1991, ch. 142, § 2, p. 334; am. 1997, ch. 194, § 1, p. 547.

STATUTORY NOTES

**Cross References.**

Board of health and welfare, § 56-1005.

ch. 347, § 1, p. 986; 1965, ch. 162, § 1, p. 314; 1974, ch. 23, §§ 125, 126, p. 633, were repealed by S.L. 1991, ch. 142, § 1.

**Prior Laws.**

Former §§ 39-1601 to 39-1606, which comprised 1925, ch. 69, §§ 1 to 6, p. 100; I.C.A., §§ 38-1101 to 38-1106; am. 1949, ch. 80, §§ 1, 2; am. 1961, ch. 80, §§ 1, 2, p. 109; am. 1963,

**Compiler's Notes.**

Section 9 of S.L. 1997, ch. 194, as amended by S.L. 2000, ch. 176, § 2 and by S.L. 2002, ch. 140, § 2, provided that this section would



be repealed effective July 1, 2007 and § 10 of S.L. 1997, ch. 194, as amended by S.L. 2000, ch. 176, § 2 and by S.L. 2002, ch. 140, § 2, enacted a new § 39-1601, effective July 1, 2007. However §§ 9 and 10 of S.L. 1997, ch. 194, and the subsequent amendments of those sections, were repealed by S.L. 2007, ch. 96, § 3, effective July 1, 2007.

**39-1602. Definitions.** — As used in this chapter:

(1) “Commissary” means a place where food, containers or supplies are stored, prepared or packaged for transit, sale or service at other locations.

(2) “Food establishment” means those operations in the food business such as, but not limited to, food processing establishments, canning factories, salvage processing facilities, food service establishments, cold storage plants, commissaries, warehouses, food vending machine operations and location, caterers, mobile food units and retail food stores. Such operations include all activities under the control of the license holder including preparation, processing, storage, service, transportation vehicles, satellite locations, divisions and departments, and remote feeding sites. The term includes operations which are conducted in permanent, temporary or mobile facilities or locations. It includes any food operation regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food. Individual divisions and departments on one (1) premises and under common ownership shall as a whole be considered a single food establishment. The term “food establishment” does not include:

(a) Private homes where food is prepared or served for individual family consumption;

(b) Fraternal, benevolent or nonprofit charitable organizations which do not prepare or serve food on a regular basis. Food shall not be considered to be served on a regular basis if the food is served for a period not to exceed five (5) consecutive days on no more than three (3) occasions per year for foods which are not potentially hazardous, or if the food is served no more than one (1) meal a week for all other foods;

(c) Bed and breakfast establishments with ten (10) or fewer beds;

(d) Establishments which offer only factory-sealed foods that are not potentially hazardous;

(e) Agricultural markets; and

(f) Agricultural equipment used for the extraction or harvest of an agricultural product including, but not limited to, mint stills.

(3) “Intermittent food establishment” means a food vendor that operates for a period of time, not to exceed three (3) days per week, at a single, specified location in conjunction with a recurring event and that offers potentially hazardous food to the general public. Examples of a recurring event may be a farmers’ or community market or a holiday market. “Intermittent food establishment” does not include the vendor of farm fresh ungraded eggs at a recurring event.

(4) “Mobile food establishment” means a food establishment selling or serving food for human consumption from any vehicle or other temporary or itinerant station and includes any movable food service establishment, truck, van, trailer, pushcart, bicycle, watercraft or other movable food service with or without wheels, including hand-carried, portable containers in or on which food or beverage is transported, stored or prepared for retail sale or given away at temporary locations.

(5) “Potentially hazardous food” means any food or ingredient, natural or synthetic, in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms or the slower growth of clostridium botulinum. Included is any food of animal origin, either raw or heat treated and any food of plant origin which has been heat treated or which is raw seed sprouts; cut melons; and garlic and oil mixtures. The term “potentially hazardous food” does not include:

- (a) Air-dried hard-boiled eggs with shells intact;
- (b) Foods with a water activity ( $a_w$ ) value of eighty-five hundredths (0.85) or less;
- (c) Foods with a pH (hydrogen ion concentration) level of four and six-tenths (4.6) or below when measured at seventy-five (75) degrees Fahrenheit;
- (d) Foods in unopened hermetically-sealed containers which have been commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution;
- (e) Foods for which laboratory evidence, acceptable to the regulatory authority, demonstrates that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of clostridium botulinum cannot occur;
- (f) Milk, half-and-half cream, butter products, frozen dairy desserts and other fluid milk products, in the original unopened container; and
- (g) Any other food items determined by the department of health and welfare not to be potentially hazardous.

(6) “Regulatory authority” means the director of the Idaho department of health and welfare or the director’s designee.

(7) “Temporary food establishment” means a food establishment that operates for a period of not more than fourteen (14) consecutive days in conjunction with a single event or celebration.

#### **History.**

I.C., § 39-1602, as added by 1991, ch. 142, § 2, p. 334; am. 1993, ch. 114, § 1, p. 291; am.

1994, ch. 138, § 1, p. 310; am. 1997, ch. 194, § 2, p. 547; am. 2004, ch. 185, § 1, p. 576; am. 2009, ch. 190, § 1, p. 619.

### **STATUTORY NOTES**

#### **Prior Laws.**

Former § 39-1602 was repealed. See Prior Laws, § 39-1601.

#### **Amendments.**

The 2009 amendment, by ch. 190, added subsections (1), (3), (4), and (7), redesignating the other subsections accordingly.

#### **Effective Dates.**

Section 2 of S.L. 1993, ch. 114 declared an emergency. Approved March 22, 1993.

Section 2 of S.L. 1994, ch. 138 declared an emergency. Approved March 21, 1994.

### **RESEARCH REFERENCES**

**Am. Jur.** — 40A Am. Jur. 2d, Hotels, Motels and Restaurants, § 9 et seq.

**C.J.S.** — 43A C.J.S., Inns, Hotels and Eating Places, § 1 et seq.

**39-1603. Powers and duties of board.** — The board of health and welfare shall promulgate rules governing:

- (1) The establishment and control of sanitation standards for food establishments;
- (2) The issuance, suspension and revocation of licenses;
- (3) The review of plans and specifications prior to construction or alteration of food establishments;
- (4) The procedure and scope of inspections to determine compliance with the standards and rules adopted under this chapter;
- (5) The criteria for the examination, embargo and destruction of food in compliance with section 37-118, Idaho Code; and
- (6) The establishment of a grading system for food establishments to be used at local option.

**History.**

I.C., § 39-1603, as added by 1991, ch. 142,  
§ 2, p. 334; am. 1997, ch. 194, § 3, p. 547.

**STATUTORY NOTES****Cross References.**

Board of health and welfare, § 56-1005.

**Prior Laws.**

Former § 39-1603 was repealed. See Prior  
Laws, § 39-1601.

**39-1604. License requirements for food establishments.** — No person, firm or corporation shall operate a food establishment, for which no other state or federal food safety inspection or license is required, without a license approved by the director of the department of health and welfare or his designee. Food establishment licenses shall not be transferable and the type of license and any restrictions will be specified on the license. Terms and conditions of licensure are to be established by rules in accordance with the intent of this chapter. Any applicant or license holder aggrieved by an action of the regulatory authority which results in denial, suspension, or revocation of a license has the right to a hearing conducted pursuant to chapter 52, title 67, Idaho Code, and appeal shall be provided therein.

**History.**

I.C., § 39-1604, as added by 1991, ch. 142,  
§ 2, p. 334; am. 1997, ch. 194, § 4, p. 547.

**STATUTORY NOTES****Cross References.**

Director of department of health and welfare, § 56-1002 et seq.

**Prior Laws.**

Former § 39-1604 was repealed. See Prior  
Laws, § 39-1601.

**RESEARCH REFERENCES**

**C.J.S.** — 39A C.J.S., Health and Environment, § 65 et seq.

**39-1605. Inspections.** — (1) The regulatory authority shall conduct unannounced inspections of every food establishment not subject to other



state or federal food safety inspections to determine compliance or lack of compliance with the provisions of this chapter and the rules established by the board of health and welfare as often as deemed necessary by the authority.

(2) The application for, or the possession of a license is a consent to inspection. The regulatory authority representative upon presentation of proper credentials is to be permitted access to the premises of any food establishment during hours of operation in order to determine compliance with the rules adopted under this chapter. Failure to grant access shall be cause for nonissuance of a license or license revocation.

(3) The regulatory authority representative is to determine the degree of compliance by examining the food, including sampling as necessary, and by inspection in accordance with the rules adopted under this chapter.

(4) For inspection and enforcement purposes, an applicant for, or holder of, a license may specify that the license reflect separate departments or divisions within a single food establishment. In such cases, an enforcement action, when necessary, shall be taken against an individual department or division within a single food establishment in lieu of an enforcement action against the food establishment as a whole, except when the department or division fails to comply with the rules established by the board of health and welfare.

(5) An inspection report, the form and manner to be determined by the board, will be generated by each inspection and be given to the person in charge of the food establishment.

#### **History.**

I.C., § 39-1605, as added by 1991, ch. 142,  
§ 2, p. 334; am. 1997, ch. 194, § 5, p. 547.

### **STATUTORY NOTES**

#### **Cross References.**

Board of health and welfare, § 56-1005.

#### **Prior Laws.**

Former § 39-1605 was repealed. See Prior Laws, § 39-1601.

### **RESEARCH REFERENCES**

**Am. Jur.** — 40A Am. Jur. 2d, Hotels, Motels, and Restaurants, § 30.

**39-1606. Criminal and civil proceedings.** — The regulatory authority may seek to enforce the provisions of this chapter and any rule or standard adopted by the board pursuant to this chapter through a court of competent jurisdiction.

(1) Misdemeanor proceedings may be brought in accordance with sections 56-1008, 56-1010, 37-117 and 37-119, Idaho Code.

(2) Civil proceedings may be brought in accordance with sections 56-1009 and 56-1010, Idaho Code.

(3) Injunctive relief may be sought in accordance with sections 56-1009, 56-1010 and 37-116, Idaho Code.

**History.**

I.C., § 39-1606, as added by 1991, ch. 142, § 2, p. 334; am. 1997, ch. 194, § 6, p. 547; am. 2003, ch. 161, § 1, p. 455.

**STATUTORY NOTES****Prior Laws.**

Former § 39-1606 was repealed. See Prior Laws, § 39-1601.

**Compiler's Notes.**

Section 3 of S.L. 1991, ch. 142 read: "The provisions of this act are hereby declared to be

severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

**39-1607. License fee.** — (1) A fee may be charged by the department of health and welfare's regulatory authority for licensing a food establishment. (a) The fee per food establishment for licenses issued from July 1, 2009, through June 30, 2010, shall be:

- (i) Sixty-five dollars (\$65.00) for temporary food establishments, intermittent food establishments and mobile food establishments without a commissary;
- (ii) Seventy-five dollars (\$75.00) for mobile food establishments with a commissary;
- (iii) Ninety-five dollars (\$95.00) for all other food establishments, except for food establishments with more than two (2) licenses on one (1) premises under common ownership; and
- (iv) One hundred seven dollars and fifty cents (\$107.50) for food establishments with more than two (2) licenses on one (1) premises under common ownership.

(b) The fee per food establishment per year for licenses issued on and after July 1, 2010, shall be:

- (i) Sixty-five dollars (\$65.00) for temporary food establishments, intermittent food establishments and mobile food establishments without a commissary;
- (ii) Eighty-five dollars (\$85.00) for mobile food establishments with a commissary;
- (iii) One hundred twenty-five dollars (\$125) for all other food establishments, except for food establishments with more than two (2) licenses on one (1) premises under common ownership; and
- (iv) One hundred fifty dollars (\$150) for food establishments with more than two (2) licenses on one (1) premises under common ownership.

(2) A license issued to a temporary or intermittent food establishment by a regulatory authority shall be valid only for the celebration or event for which the license was issued; however, no additional license fee will be charged by a regulatory authority to a temporary or intermittent food establishment for other celebrations or events within the same calendar year and with the same menu.

(3) Fees collected for licensing a food establishment shall be used by the designated regulatory authority for funding a portion of the food safety inspection program.

(4) On and after January 1, 2010, the regulatory authority shall review at three (3) year intervals the cost data associated with the operation of the food inspection program as well as actions taken to increase the efficiency of

such program and provide a report on same to the health and welfare committees of the Idaho legislature.

**History.**

I.C., § 39-1607, as added by 1997, ch. 194, § 7, p. 547; am. 2002, ch. 140, § 3, p. 392; am.

2007, ch. 96, § 1, p. 279; am. 2009, ch. 190, § 2, p. 619.

**STATUTORY NOTES**

**Amendments.**

The 2007 amendment, by ch. 96, in the second sentence, added “and shall be collected by the designated regulatory authority”; in the third sentence, deleted “shall be deposited in the food safety fund and” following “establishment,” and inserted “by the designated regulatory authority”; and added the last sentence.

The 2009 amendment, by ch. 190, added the subsection (1) designation, and therein, in the introductory language, substituted “department of health and welfare’s regulatory authority” for “department of health and welfare,” and deleted the last sentence, which read: “The fee shall not exceed sixty-five dollars (\$65.00) per establishment per year and shall be collected by the designated regula-

tory authority”; added subsections (1)(a) and (1)(b), (2), and (4); and redesignated the former last paragraph as subsection (3), and therein deleted the last sentence, which read: “Any funds remaining in the food safety fund after the effective date of this act shall be paid to the designated regulatory authority that collected the fee.”

**Compiler’s Notes.**

Section 11 of S.L. 1997, ch. 194, as amended by S.L. 2000, ch. 176, § 1 and by S.L. 2002, ch. 140, § 1, provided that § 7 [this section] should be null and void on and after July 1, 2007. However, § 11 of S.L. 1997, ch. 194, as amended, was repealed by S.L. 2007, ch. 96, § 4, effective July 1, 2007.

**39-1608. Food safety fund. [Repealed.]**

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-1608, which comprised 1925, ch. 69, § 8, p. 10; I.C.A., § 38-1108; am. 1949, ch. 80, § 4, p. 139; am. 1953, ch. 43, § 1, p. 61 was repealed by S.L. 1991, ch. 142, § 1.

**Compiler’s Notes.**

This section, which comprised I.C., § 39-1608, as added by 1997, ch. 194, § 8, p. 547, was repealed by S.L. 2007, ch. 96, § 2. See § 39-1607.

**39-1609 — 39-1613. Sterilization of dishes — Preservation of food — Sale or service of unwholesome food — Dairy products — Sleeping in cook room prohibited — Washing facilities and requirements — Common towel prohibited — Cuspidors — Penalties. [Repealed.]**

**STATUTORY NOTES**

**Compiler’s Notes.**

These sections, which comprised 1925, ch. 69, §§ 7 to 13, p. 10; I.C.A., §§ 38-1109 to

38-1113; am. 1949, ch. 80, §§ 5, 6, p. 139; am. 1953, ch. 43, § 1, p. 61, were repealed by S.L. 1991, ch. 142, § 1.



**CHAPTER 17****HEALTH REGULATIONS FOR EATING PLACES AND  
FOOD ESTABLISHMENTS — GRADING AND  
LICENSING****SECTION.**

39-1701 — 39-1707. [Repealed.]  
39-1708 — 39-1710. [Reserved.]

**SECTION.**

39-1711 — 39-1716. [Repealed.]

**39-1701 — 39-1704. Jurisdiction of director — “Eating place” defined — Application to butchers, bakers, and candy makers — Employment of diseased persons prohibited. [Repealed.]**

**STATUTORY NOTES****Compiler’s Notes.**

These sections, which comprised 1925, ch. 91, §§ 1 to 3, p. 129; 1927, ch. 116, § 1, p. 161; I.C.A., §§ 38-1201 to 38-1204; am. 1945, ch. 81, § 1, p. 127; am. 1949, ch. 80, §§ 7, 8, p.

139; am. 1961, ch. 149, § 1, p. 215; am. 1974, ch. 23, § 127, p. 633, were repealed by S.L. 1991, ch. 142, § 1. For present comparable law, see §§ 39-1601 to 39-1606.

**39-1705. Health certificate. [Repealed.]**

**STATUTORY NOTES****Compiler’s Notes.**

This section, which comprised S.L. 1925,

ch. 91, § 4, p. 129; I.C.A., § 38-1205, was repealed by S.L. 1981, ch. 175, § 1.

**39-1706. Penalties for violations. [Repealed.]**

**STATUTORY NOTES****Compiler’s Notes.**

This section, which comprised 1925, ch. 91, § 5, p. 129; I.C.A., § 38-1206, was repealed

by S.L. 1991, ch. 142, § 1. For present comparable law, see § 39-1606.

**39-1707. Designation of physicians to conduct examinations. [Repealed.]**

**STATUTORY NOTES****Compiler’s Notes.**

This section, which comprised S.L. 1925, ch. 91, § 6, as added by 1929, ch. 34, § 1, p.

36; I.C.A., § 38-1207, was repealed by S.L. 1961, ch. 149, § 2.

**39-1708 — 39-1710. [Reserved.]****39-1711 — 39-1716. Grades and licenses — Licensing of applicants — Rules and regulations — Revocation of licenses — Definitions — Penalty. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

These sections, which comprised 1949, ch. 81, §§ 1 to 8, p. 142; am. 1974, ch. 23, §§ 128

to 131, were repealed by S.L. 1991, ch. 142, § 1. For present comparable law, see §§ 39-1601 to 39-1606.

**CHAPTER 18****HOTELS AND FOOD VENDING ESTABLISHMENTS — REGULATIONS AND INSPECTION****SECTION.**

39-1801. Definitions.  
 39-1802. Posting of information.  
 39-1803. Register.  
 39-1804. Liability for property of guests.  
 39-1805. Eviction of guests.  
 39-1806. Hotelkeeper's lien.  
 39-1807. Disposition of property to satisfy lien.

**SECTION.**

39-1808. Disposition of unclaimed property.  
 39-1809. Hotelkeeper's responsibility to provide accommodations.  
 39-1810. Consumption or possession of alcohol at hotels.  
 39-1811 — 39-1834. [Repealed.]

**39-1801. Definitions. — As used in this chapter:**

(1) "Guest" means any person who is registered in a hotel, or who is in the hotel and intends to register, and each person in such hotel who is present in the hotel with the registrant at the registrant's invitation.

(2) "Hotel" means every building or structure kept, used, maintained or advertised as an inn, hotel or public lodging house, or place where sleeping accommodations are furnished for hire to transient guests, whether with or without meals, in which more than ten (10) rooms are used for the accommodation of such guests.

(3) "Hotel day" means a period which commences at three o'clock in the afternoon of each day and which concludes at three o'clock the following afternoon or at the posted checkout time of the following day in the event the guest is checking out, whichever occurs first. Rates per day for furnished rooms shall mean for such period, or any part thereof, following the time of acceptance of a room by the guest.

(4) "Hotelkeeper" means the owner, operator, management company, proprietor, keeper, manager or lessee of a hotel.

**History.**

I.C., § 39-1801, as added by 1991, ch. 296, § 2, p. 779.

## STATUTORY NOTES

**Cross References.**

Child labor in hotels, §§ 44-1301, 44-1305.  
Doors in hotels, § 39-1905.

Fraudulent procurement of board, § 18-2405.

Property held for charges, § 55-1401 et seq.

**Prior Laws.**

Former §§ 39-1801 to 39-1804, which com-

prised 1911, ch. 189, §§ 1, 2, 15, 16, p. 621; reen. C.L. 65: 129, 65: 130, 65: 142; 65: 143, C.S., §§ 1796, 1797, 1809, 1811; am. 1925, ch. 24, § 1, p. 34; I.C.A., §§ 38-1301 to 38-1304, am. 1951, ch. 112, § 1, p. 259; am. 1961, ch. 82, § 1, p. 112, were repealed by S.L. 1991, ch. 296, § 1.

## RESEARCH REFERENCES

**Am. Jur.** — 40A Am. Jur. 2d, Hotels, Motels, Restaurants, § 1 et seq.

**C.J.S.** — 43A C.J.S., Inns, Hotels and Eating Places, § 1 et seq.

**39-1802. Posting of information.** — (1) In each hotel there shall be posted in a plainly legible fashion, in a conspicuous place in each sleeping room, the following information:

- (a) The maximum rates at which such room is rented;
- (b) A copy of section 18-2405, Idaho Code; and
- (c) A copy of section 39-1804, Idaho Code.

(2) In each hotel there shall be posted a copy of this chapter in a plainly legible fashion, in at least two (2) conspicuous places.

**History.**

I.C., § 39-1802, as added by 1991, ch. 296, § 2, p. 779.

## STATUTORY NOTES

**Prior Laws.**

Former § 39-1802 was repealed. See Prior Laws, § 39-1801.

## RESEARCH REFERENCES

**Am. Jur.** — 40 Am. Jur. 2d, Hotels, Motels, and Restaurants, § 32.

**39-1803. Register.** — Every hotel shall keep a record of the arrival and departure of its guests in such a manner that the record will be permanent for at least one (1) year from the date of departure.

**History.**

I.C., § 39-1803, as added by 1991, ch. 296, § 2, p. 779.

## STATUTORY NOTES

**Prior Laws.**

Former § 39-1803 was repealed. See Prior Laws, § 39-1801.



**RESEARCH REFERENCES**

**Am. Jur.** — 40 Am. Jur. 2d, Hotels, Motels, and Restaurants, § 33.

**39-1804. Liability for property of guests.** — (1) The hotelkeeper is under no obligation to accept for safekeeping any moneys, securities, jewelry, or precious stones of any kind belonging to any guest, and, if such are accepted for safekeeping, he shall not be liable for the loss thereof unless such loss is the proximate result of fault or negligence of the hotelkeeper. The liability, if any, of the hotelkeeper to a guest shall be limited to one thousand dollars (\$1,000) for such loss, or such higher amount as the hotelkeeper may agree in writing to assume, if the hotel has given a receipt for the property to the guest, stating the value of the property accepted for safekeeping, on a form which states, in type large enough to be clearly noticeable, that the hotel is not liable for any loss exceeding one thousand dollars (\$1,000), or such higher amount as the hotelkeeper may agree in writing to assume, and is only liable for that amount if the loss is the proximate result of fault or negligence of the hotelkeeper.

(2) The hotelkeeper shall not be liable or responsible to any guest for the loss of wearing apparel, goods, or other property, except as provided in subsection (1) of this section, unless such loss occurred as the proximate result of fault or negligence of such hotelkeeper. In case of such fault or negligence, the hotelkeeper shall not be liable for a sum greater than five hundred dollars (\$500) unless prior to the loss or damage the guest files with the hotelkeeper an inventory of his effects and the value thereof and the hotelkeeper is given the opportunity to inspect such effects and check them against such inventory. The hotelkeeper shall not be liable or responsible to any guest for the loss of effects listed in such inventory in a total amount exceeding one thousand dollars (\$1,000) or such higher amount as the hotelkeeper may agree in writing to assume.

**History.**

I.C., § 39-1804, as added by 1991, ch. 296, § 2, p. 779.

**STATUTORY NOTES****Prior Laws.**

Former § 39-1804 was repealed. See Prior Laws, § 39-1801.

**RESEARCH REFERENCES**

**Am. Jur.** — 40A Am. Jur. 2d, Hotels, Motels and Restaurants, § 122 et seq.

**C.J.S.** — 43A C.J.S., Inns, Hotels and Eating Places, § 1 et seq.

**39-1805. Eviction of guests.** — (1) A hotelkeeper shall have the right to evict a guest who has failed to pay his hotel bill when due. Before such eviction may occur, demand for payment of the bill must be made and the guest must be requested to leave if the bill is not paid. If the guest fails to

pay the bill after such demand, the hotelkeeper may evict such guest by locking the door to his room, removing said guest's baggage and other personal property, or by any other peaceful means. The hotel shall have the right to hold said baggage and other property as hereinafter provided.

(2) A hotelkeeper also shall have the right to evict a person, whether or not such person is [a] guest of the hotel, who:

- (a) Is under the influence of alcohol, drugs or any other intoxicating substances;
- (b) Is disorderly so as to disturb the peace of other guests;
- (c) Seeks to use the hotel for any unlawful purpose;
- (d) Seeks to bring property into the hotel which may be dangerous to other persons (such as firearms, explosives or hazardous or toxic substances) or the possession of which by such person is unlawful;
- (e) Destroys, damages or defaces property of the hotel or its guests or threatens to do so;
- (f) Would cause or permit any hotel room to exceed its maximum allowable occupancy as established by the hotelkeeper; or
- (g) Refuses to abide by reasonable standards or policies established by the hotelkeeper for operation and management of the hotel.

**History.**

I.C., § 39-1805, as added by 1991, ch. 296,  
§ 2, p. 779; am. 1993, ch. 125, § 1, p. 316.

**STATUTORY NOTES****Prior Laws.**

Former § 39-1805, which comprised S.L. 1911, ch. 189, § 3, p. 622; reen. C.L. 65:131; C.S., § 1798; I.C.A., § 38-1305, was repealed by S.L. 1976, ch. 259, § 1.

was inserted by the compiler to supply an obviously missing term.

The words enclosed in parentheses so appeared in the law as enacted.

**Compiler's Notes.**

The bracketed word "a" in subsection (2)

**39-1806. Hotelkeeper's lien.** — A hotelkeeper has a lien upon and may retain all baggage and other personal property in possession of a guest for the proper charges due to the hotel from the guest for his food, board, room rent, lodging and accommodations and for any other charges incurred by the guest and for all money and credit paid for or furnished to him and for the costs of enforcing such lien including court costs and reasonable attorney's fees. The hotelkeeper shall have the right to retain and hold possession of such baggage and other personal property until the amount of such charges and money be fully paid, and to sell such baggage and other personal property for payment of such lien, charges and costs, including court costs and reasonable attorney's fees in the manner provided in section 39-1807, Idaho Code. Such baggage and other personal property shall not be subject to attachment or execution until such lien and storage charge and costs of satisfying such lien are fully satisfied.

**History.**

I.C., § 39-1806, as added by 1991, ch. 296,  
§ 2, p. 779.

## STATUTORY NOTES

**Prior Laws.**

Former sections 39-1806 to 39-1808, which comprised 1911, ch. 189, §§ 4 to 6, pp. 622, 623; reen. C.L., 65:132 to 65:134; C.S., 1799 to 1801; I.C.A., §§ 38-1306 to 38-1308, were repealed by S.L. 1991, ch. 296, § 1.

**39-1807. Disposition of property to satisfy lien.** — The hotelkeeper shall retain such baggage and other property upon which he has a lien as provided in section 39-1806, Idaho Code, for a period of thirty (30) days. At the expiration of such time if such lien is not fully satisfied he may proceed to sell such baggage and other personal property or a part thereof at public auction after posting notice of the sale as provided by law upon execution, and by mailing a notice fifteen (15) days prior to the sale by registered mail of the time and place of such sale to such guest at the address given by the guest on the hotel register. The proceeds of the sale shall be applied first to cost of the sale and attorney's fees and then to the discharge of the lien. The remainder, if any, must be paid to the guest. Provided, however, if the hotelkeeper knew that the property brought upon his premises was not, when brought, legally in possession of such guest, or had written notice that such property was not then the property of such guest, at the time when such charges or indebtedness were incurred, such property shall not be subject to the lien or sale as hereinbefore provided.

**History.**

I.C., § 39-1807, as added by 1991, ch. 296, § 2, p. 779.

## STATUTORY NOTES

**Prior Laws.**

Former § 39-1807 was repealed. See Prior Laws, § 39-1806.

**39-1808. Disposition of unclaimed property.** — When any baggage or other personal property is received by a hotel and left unclaimed, or left unclaimed by a guest in a hotel, the hotelkeeper may hold and store the same, until all just and reasonable storage and other charges are paid, and if no guest calls for his baggage or other personal property left in a hotel for a period of sixty (60) days or more, the hotelkeeper may sell such property at public auction to the highest bidder, having given fifteen (15) days prior notice, by registered mail, of the time and place of such sale to such guest at the address given by the guest on the hotel register, and by posting notice of such sale as provided by law upon execution. If any surplus be left after paying storage, freight, cost of advertising, and other reasonable charges, the same must be paid to the owner of such property, when known, at any time thereafter, upon demand being made therefor within thirty (30) days after the sale.

**History.**

I.C., § 39-1808, as added by 1991, ch. 296, § 2, p. 779.



## STATUTORY NOTES

**Prior Laws.**

Former § 39-1808 was repealed. See Prior Laws, § 39-1806.

**39-1809. Hotelkeeper's responsibility to provide accommodations.** — A hotelkeeper shall not be required to provide accommodations, facilities or privileges of a hotel to any person who:

(1) Is unwilling or unable to pay for the accommodations and services of the hotel. A hotelkeeper may require a prospective guest to demonstrate the ability to pay for the accommodations and services, including a damage deposit in a reasonable amount, by cash or acceptable credit card;

(2) The hotelkeeper reasonably believes to be under the influence of alcohol, drugs or any other intoxicating substances or who is disorderly so as to disturb the peace of other guests;

(3) The hotelkeeper reasonably believes seeks to use the hotel for any unlawful purpose;

(4) The hotelkeeper reasonably believes seeks to bring property into the hotel which may be dangerous to other persons (such as firearms, explosives or hazardous or toxic substances) or the possession of which by such person is unlawful;

(5) Destroys, damages or defaces property of the hotel or its guests or threatens to do so;

(6) Is under eighteen (18) years of age and unaccompanied by his parent or guardian. A hotelkeeper may condition the provision of accommodations, facilities or privileges of a hotel to persons under the age of eighteen (18) years by requiring the parent or guardian to:

(a) Agree in writing to accept liability for the costs of the accommodations, including the cost of the room, taxes, other charges and any damages to the hotel caused by such person or his invitees; and

(b) To provide an acceptable credit card or cash deposit sufficient to cover such costs;

(7) Would cause or permit any hotel room to exceed its maximum allowable occupancy as established by the hotelkeeper; or

(8) Refuses to abide by reasonable standards or policies established by the hotelkeeper for operation and management of the hotel.

**History.**

I.C., § 39-1809, as added by 1993, ch. 125, § 2, p. 316.

## STATUTORY NOTES

**Prior Laws.**

Former §§ 39-1809 and 39-1810, which comprised 1911, ch. 189, §§ 7, 8, p. 621; reen. C.L., 65:135 and 65:136; C.S., §§ 1802 and 1803 to 1805, 1808; am. 1925, ch. 24, § 2, p.

34; I.C.A., §§ 38-1309 and 38-1310, were repealed by S.L. 1991, ch. 296, § 1.

**Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

**39-1810. Consumption or possession of alcohol at hotels.** — (1) A

license or permit properly issued to a person to serve beer, wine or liquor by the drink, which license or permit is used at or in a hotel, may not be suspended, revoked or not be renewed, nor may conditions be placed upon it, by reason of the fact that individuals at or in the hotel, whether or not they are guests, possess or consume beer, wine or liquor without being of a legal age to do so or at a time when such consumption is not legal if:

- (a)(i) The alcohol was not sold, provided or delivered to the persons who are not of legal age by the licensee or its agents or employees; or
- (ii) The alcohol was not sold, provided or delivered by the licensee or its agents or employees at a time when it was legally prohibited from doing so;
- (b) The licensee, the hotelkeeper and their agents and employees took reasonable precautions to prevent:
  - (i) Persons who are not of legal age from possessing or consuming alcohol at or in the hotel; or
  - (ii) Possession or consumption of alcohol at or in the hotel at a time when such possession or consumption is not legal; and
- (c) The possession or consumption is not on that portion of the premises which the hotelkeeper has identified as the bar or restaurant or in a meeting room, ballroom or the like in which beer, wine or liquor then is being sold by the licensee.

(2) A license or permit properly issued to a person to serve beer, wine or liquor by the drink, which license or permit is used at or in a hotel, may not be suspended, revoked or not be renewed, nor may conditions be placed upon it, by reason of the fact that hotel guests possess or consume beer, wine or liquor in their sleeping rooms and serve it there to their invitees who are not of legal age or at a time during which it would not be legal for the licensee to sell or permit the possession or consumption of alcohol on the premises.

#### **History.**

I.C., § 39-1810, as added by 1993, ch. 125, § 3, p. 316.

### **STATUTORY NOTES**

#### **Prior Laws.**

Former § 39-1810 was repealed. See Prior Laws, § 39-1809.

#### **Effective Dates.**

Section 4 of S.L. 1993, ch. 125 declared an emergency. Approved March 22, 1993.

### **39-1811 — 39-1813. Plumbing — Elevators — Drinking Water. [Repealed.]**

### **STATUTORY NOTES**

#### **Compiler's Notes.**

These sections, which comprised 1911, ch. 189, §§ 9, 10, 14, p. 624; reen. C.L. 65-137 to

65-138, 65-141; C.S., §§ 1804, 1805, 1808; I.C.A., §§ 38-1311 to 38-1313, were repealed by S.L. 1991, ch. 296, § 1.

**39-1814. Food-vending establishments — Annual inspection — Certificate — Sanitary regulations. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised 1911, ch. 189, § 17, p. 625; reen. C.L. 65:144; C.S., § 1811; am. 1925, ch. 24, § 4, p. 34; I.C.A.,

§ 38-1314; am. 1974, ch. 23, § 132, p. 633, was repealed by S.L. 1991, ch. 142, § 1. For present law, see §§ 39-1601 to 39-1606.

**39-1815. Enforcement of law. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised S.L. 1911, ch. 189, § 12, p. 624; compiled and reen. C.L.

65:140; C.S., § 1807; I.C.A., § 38-1315; am. 1974, ch. 23, § 133, p. 633, was repealed by S.L. 1976, ch. 259, § 1.

**39-1816. Inspector's books open to public. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised 1911, ch. 189, § 18, p. 625; reen. C.L., 65:145; C.S.,

§ 1812; I.C.A., § 38-1316; am. 1974, ch. 23, § 134, p. 633; am. 1976, ch. 259, § 2, p. 878, was repealed by S.L. 1991, ch. 296, § 1.

**39-1817, 39-1818. Certificate of condition — Issuance and posting — Penalty for false certificate. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised S.L. 1911, ch. 189, §§ 19, 20, p. 625; reen. C.L. 65:146 and 65:147; C.S., §§ 1813 and 1814; am.

1925, ch. 24, § 3, p. 34; I.C.A., §§ 38-1317, 38-1318; am. 1974, ch. 23, §§ 135, 136, p. 633, were repealed by S.L. 1976, ch. 259, § 1.

**39-1819 — 39-1828. Penalty for interference with inspection — Register — Posting law — Receipt for baggage or valuables — Penalties — Defining guest and hotelkeeper — Receipt and deposit of valuables — Liability for clothing and personal property — Eviction for nonpayment — Hotelkeeper's lien — Disposition of unclaimed property. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised 1911, ch. 189, §§ 21, 23, p. 620; reen. C.L., 65:148, 65:150; C.S., §§ 1815, 1817; am. 1921, ch. 121, § 1, p. 295; I.C.A., §§ 38-1319, 38-1320;

§§ 39-1819A to 39-1819C, 39-1821 to 39-1828, as added by 1951, ch. 112, §§ 2 to 12, p. 259, were repealed by S.L. 1991, ch. 296, § 1. For present comparable law, see §§ 39-1801 to 39-1808.



**39-1829 — 39-1834. Definitions — Rules and regulations — Whole-some foods and beverages — Cleaning regulations — Dispensing of food. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised 1963, ch. 178, §§ 1 to 5, p. 526; am. 1974, ch. 23, § 137, p. 633; I.C., § 39-1834, as added by 1976, ch.

259, § 3, p. 878, were repealed by S.L. 1991, ch. 142, § 1. For present comparable law, see §§ 39-1601 to 39-1606.

**CHAPTER 19**

**FIRE ESCAPES AND DOORS**

**SECTION.**

39-1901. Fire escapes to be provided for certain structures.  
39-1902. How attached.  
39-1903. Application of chapter to school districts. [Repealed.]

**SECTION.**

39-1904. Penalty for violating preceding sections.  
39-1905. Doors on public buildings — Penalty.

**39-1901. Fire escapes to be provided for certain structures. —** It is hereby made the duty of every person, firm or corporation, or his or its agents, officers or trustees, owning or having the management or control of any public hall, office building, factory or other structure over two (2) stories in height, and in the case of school buildings, above one (1) story in height except that any story above the first which, because of the contour of the site, has direct ground-floor exits shall be exempt from the requirement herein set forth, to provide and furnish such building with safe and suitable metallic, iron or fireproof ladders of sufficient strength, and to permanently and securely attach the same to the outside or outer walls of such buildings, in such manner and in such position as to be adjacent to the windows, and convenient and easy of access to the occupants of such buildings in case of fire, or fire escape stairs located in such a manner as to be convenient and easy of access from each floor to the occupants of such buildings in case of fire. A fire escape stair shall consist of a continuous stairway enclosed from the highest point to the lowest point by walls of noncombustible materials. Access to the fire escape stair shall be by means of self-closing class "B" fire doors that open in the direction of exit travel. A fire escape stair shall exit into a public way or directly to the exterior of the building at ground level.

**History.**

1903, ch. 148, § 1; reen. R.C., § 1550, compiled and reen. C.L., § 1550; C.S., § 2586;

I.C.A., § 38-401; am. 1949, ch. 189, § 1, p. 404; am. 1957, ch. 103, § 1, p. 181; am. 1961, ch. 235, § 1, p. 381.

**STATUTORY NOTES**

**Cross References.**

Penalty for violation, § 39-1904.

## JUDICIAL DECISIONS

**Landlord's Duty.**

There is no common-law duty on the part of the landlord to construct fire escapes to a

one-story building. *Olin v. Honstead*, 60 Idaho 211, 91 P.2d 380 (1939).

## RESEARCH REFERENCES

**Am. Jur.** — 40A Am. Jur. 2d, Hotels, Motels and Restaurants, §§ 34, 107, 108.

**C.J.S.** — 39A C.J.S., Health and Environment, § 55.

**39-1902. How attached.** — Such metallic, iron or fireproof ladders, if used, must connect with each floor above the first, and be well fastened and secure and of sufficient strength, and must extend from the first story to the upper stories of such building or to the cornice thereof.

**History.**

1903, p. 148, § 2; reen. R.C. & C.L., § 1551;

C.S., § 2587; I.C.A., § 38-1402; am. 1957, ch. 103, § 2, p. 181.

## STATUTORY NOTES

**Cross References.**

Penalty for violation, § 39-1904.

**Effective Dates.**

Section 3 of S.L. 1957, ch. 103 declared an emergency. Approved February 27, 1957.

**39-1903. Application of chapter to school districts. [Repealed.]**

## STATUTORY NOTES

**Compiler's Notes.**

This section, which comprised S.L. 1903, p. 148, § 3; reen. R.C. & C.L., § 1552; C.S.,

§ 2588; I.C.A., § 38-1403; am. 1949, ch. 189, § 2, p. 404, was repealed by S.L. 1976, ch. 35, § 1.

**39-1904. Penalty for violating preceding sections.** — Any person, firm or corporation, or his or its agents, officers or trustees, who shall fail to comply with the preceding provisions of this chapter, shall be guilty of a misdemeanor, and on conviction thereof shall be punishable by imprisonment in the county jail for not less than three (3) nor more than six (6) months, or by a fine of not less than \$200.00 nor more than \$300.00, or by both such fine and imprisonment.

**History.**

1903, p. 148, § 4; reen. R.C., § 1553; com-

piled and reen. C.L., § 1553; C.S., § 2589; I.C.A., § 28-1404.

**39-1905. Doors on public buildings — Penalty.** — All public buildings which may or shall be used for churches, theaters, schoolhouses, public meetings, hotel lobbies, or which may or shall be used for any purpose whereby a collection of people may be assembled together, shall be so built and constructed that all doors leading from the main hall or assembly room, which may be used for any of the purposes aforesaid, shall be so hung upon their hinges and constructed that they shall open outward, and that all means of egress for the public from the main hall, or principal room, and

from the building shall be by means of doors which shall open outward from the main hall or building. Any person or persons who shall fail to comply with the provisions of this section shall be guilty of a misdemeanor.

**History.**

1911, ch. 97, §§ 1, 3, p. 341; compiled and

reen. C.L., § 1553a; C.S., § 2590; I.C.A., § 38-1405.

**STATUTORY NOTES****Cross References.**

Penalty for misdemeanor when not otherwise provided, § 18-113.

**CHAPTER 20**

## **BARBER SHOPS, HAIRDRESSING ESTABLISHMENTS AND PUBLIC BATHING PLACES**

**SECTION.**

39-2001 — 39-2003. [Repealed.]

**39-2001 — 39-2003. Jurisdiction of director — Inspection — Rules — Certificate of compliance. [Repealed.]**

**STATUTORY NOTES****Compiler's Notes.**

The following sections were repealed by S.L. 2003, ch. 181, § 1, effective July 1, 2003.

39-2001: 1913, ch. 75, § 1, p. 326; reen. C.L. 65:151; C.S., § 1818; I.C.A., § 53-701; am. 1974, ch. 23, § 138, p. 633; am. 1988, ch. 74, § 1, p. 106.

39-2002: 1913, ch. 75, § 2, p. 326; reen. C.L.

65:152; C.S., § 1819; I.C.A., § 53-702; am. 1974, ch. 23, § 139, p. 633; am. 1993, ch. 216, § 25, p. 587.

39-2003: 1913, ch. 75, § 3, p. 326; reen. C.L. 65:153; C.S., § 1820; I.C.A., § 53-703; am. 1974, ch. 23, § 140, p. 633; am. 1988, ch. 74, § 2, p. 106; am. 2003, ch. 71, § 2, p. 236.

**CHAPTER 21**

## **MARKING OF EXPLOSIVES**

**SECTION.**

39-2101. Explosives to be marked.

39-2102. Regulations concerning markings.

39-2102A. Labeling of paint and cleansing

**SECTION.**

liquids containing toxic additives.

39-2103. Penalties for violation.

**39-2101. Explosives to be marked.** — It shall be unlawful for any person or persons, partnership or corporation, to sell or offer for sale, or take or solicit orders of sale, or purchase, or use, or have on hand or in store for the purpose of sale or use, in any state, any high explosive, unless on each and every box or package and wrapper containing any high explosive, there shall be plainly stamped or printed the name and place of business of the person or partnership or corporation by whom or which the same was manufactured, and the exact and true date of its manufacture, and the percentage of nitroglycerin or other high explosive contained therein.



**History.**

1907, p. 314, § 1; reen. R.C. & C.L., § 1555; C.S., § 2593; I.C.A., § 38-1501; am. 1963, ch. 18, § 13, p. 154.

**STATUTORY NOTES****Cross References.**

Selling explosives to minors, § 18-3308.

Keeping explosive in city or town limits in violation of local ordinance a misdemeanor, § 18-3311.

**RESEARCH REFERENCES**

**Am. Jur.** — 31A Am. Jur. 2d, Explosions and Explosives, § 116 et seq.

**C.J.S.** — 35 C.J.S., Explosives, § 1 et seq.

**39-2102. Regulations concerning markings.** — It shall be unlawful for any person or persons, partnership or corporation, to have two (2) or more different dates on any such box or package containing high explosive; it shall further be unlawful for any person or persons, partnership or corporation, to use any box, package or wrapper formerly used by any other person or persons, partnership or corporation, in the packing of such high explosive; and the name and date on such box or package shall be the same as on the wrapper containing such explosive.

**History.**

1907, p. 314, § 2; reen. R.C. & C.L., § 1556; C.S., § 2594; I.C.A., § 38-1502; am. 1963, ch. 18, § 14, p. 154.

**STATUTORY NOTES****Legislative Intent.**

Section 15 of S.L. 1963, ch. 18 reads: "Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any one or more provisions of this act or the application thereof to any person or circumstance is held by any court of competent jurisdiction to be

invalid, the remaining provisions hereof and the application of the provisions hereof to persons or circumstances other than those as to which they are held invalid shall not be affected by such holding."

**Effective Dates.**

Section 16 of S.L. 1963, ch. 18 declared an emergency. Approved February 18, 1963.

**39-2102A. Labeling of paint and cleansing liquids containing toxic additives.** — All persons, partnerships, or corporations who sell or offer to sell in the state of Idaho any type of paint, solvent, or cleansing liquids containing toxic additives shall cause a label to be placed on each and every box, package, or container showing thereon the name and type of such ingredients and/or toxic additives and the amount of each.

**History.**

I.C., § 39-2102(A), as added by 1963, ch. 40, § 1, p. 188; am. and redesign. 2007, ch. 90, § 19, p. 246.

**STATUTORY NOTES****Amendments.**

The 2007 amendment, by ch. 90, redesignated the section from § 39-2102(A).

the act should take effect from and after January 1, 1964.

**Effective Dates.**

Section 2 of S.L. 1963, ch. 40 provided that

**39-2103. Penalties for violation.** — If any person or persons, partnership or corporation, shall violate any of the provisions of this chapter, such person or persons, the members of such partnership, or the officers or agents of such corporation, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than \$300.00, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment, in the discretion of the court.

**History.**

1907, p. 314, § 3; reen. R.C. & C.L., § 1557;  
C.S., § 2595; I.C.A., § 38-1503.

## CHAPTER 22

### LIQUEFIED PETROLEUM GASES

**SECTION.**

39-2201 — 39-2205. [Repealed.]

**39-2201 — 39-2205. Definition — Advertising — Jurisdiction — Refilling containers — Penalty — Conflicting ordinances prohibited.** [Repealed.]

#### STATUTORY NOTES

**Compiler's Notes.**

These sections, which comprised 1945, ch. 39, §§ 1 to 5, p. 50; am. 1974, ch. 39, §§ 21,

22, p. 1023, were repealed by S.L. 1996, ch. 421, § 23, effective July 1, 1996.

## CHAPTER 23

### SMOKE MANAGEMENT

**SECTION.**

39-2301 — 39-2305. [Repealed.]

**39-2301 — 39-2305. Legislative intent — Definitions — Agricultural burning fees — Regulation — Smoke management advisory board — Agricultural field burning.** [Repealed.]

#### STATUTORY NOTES

**Prior Laws.**

Former §§ 39-2301 to 39-2307 concerning boat safety equipment, which comprised 1909, p. 335, §§ 1 to 3; reen. C.L. 115:1 to 115:3; C.S., §§ 2601 to 2603; 1927, ch. 226, §§ 1 to 4, p. 329; I.C.A., §§ 38-1601 to 38-1603, 38-1701 to 38-1704; am. 1974, ch. 39, §§ 23, 24, p. 1023, were repealed by S.L. 1980, ch. 246, § 1, effective May 1, 1980. For present comparable law, see § 67-7001 et seq.

**Compiler's Notes.**

The following sections were repealed by S.L. 1999, ch. 378, § 1, effective July 1, 1999:

§ 39-2301, which comprised I.C., § 39-2301, as added by 1985, ch. 248, § 1, p. 580; am. 1986, ch. 325, § 1, p. 797, was repealed by S.L. 1999, ch. 378, § 1, effective July 1, 1999.

§ 39-2302, which comprised I.C., § 39-2302, as added by 1986, ch. 325, § 2, p. 797, was repealed by S.L. 1999, ch. 378, § 1, effective July 1, 1999.

§ 39-2303, which comprised I.C., § 39-2303, as added by 1985, ch. 248, § 1, p. 580; redesign. and am. 1986, ch. 325, § 3, p. 797,

was repealed by S.L. 1999, ch. 378, § 1, effective July 1, 1999.

§ 39-2304, which comprised I.C., § 39-2304, as added by 1985, ch. 248, § 1, p. 580; redesign. and am. 1986, ch. 325, § 4, p. 797; am. 1990, ch. 397, § 1, p. 1115, was repealed

by S.L. 1999, ch. 378, § 1, effective July 1, 1999.

§ 39-2305, which comprised I.C., § 39-2305, as added by 1986, ch. 325, § 5, p. 797, was repealed by S.L. 1999, ch. 378, § 1, effective July 1, 1999.

## CHAPTER 24

### HOME HEALTH AGENCIES

#### SECTION.

39-2401. Purpose and authority.

39-2402. Definitions.

39-2403. Licensure required.

39-2404. Application — Issuance — Renewal — Denial.

39-2405. Rules, regulations, and enforcement.

39-2406. Inspections and consultations.

#### SECTION.

39-2407. Information confidential.

39-2408. Injunction to prevent operation without license.

39-2409. Bill of rights.

39-2410. Use of terms limited.

39-2411. Persons, activities or entities not subject to regulation under this chapter.

**39-2401. Purpose and authority.** — (1) The purpose of this chapter is to provide for the development, establishment, and enforcement of standards for the care and treatment of individuals by agencies as provided by this chapter.

(2) For the purposes of this chapter, the board of health and welfare, in consultation with provider representatives, shall have the authority to define the services necessary to the operation of an agency, and to adopt rules, regulations and standards for the licensing of an agency.

#### History.

I.C., § 39-2401, as added by 1992, ch. 56, § 2, p. 162.

#### STATUTORY NOTES

#### Prior Laws.

Former §§ 39-2401 to 39-2410, which comprised S.L. 1961, ch. 281, §§ 1 to 10, p. 499; am. 1963, ch. 170, §§ 1, 2, p. 492; am. 1965,

ch. 3, § 1, p. 5, were repealed by S.L. 1980, ch. 246, § 1, effective May 1, 1980. For present comparable law, see § 67-7001 et seq.

#### JUDICIAL DECISIONS

#### Authority of county.

The legislature intended that counties be able to offer home health services as evidenced by the language of the home health

services statutes. *Idaho Home Health, Inc. v. Bear Lake County*, 128 Idaho 800, 919 P.2d 329 (1996).

**39-2402. Definitions.** — As used in this chapter:

(1) "Board" means the board of health and welfare.

(2) "Business entity" means a public or private organization owned or operated by one or more persons.

(3) "Department" means the department of health and welfare.

(4) "Health care services" mean any of the following services that are provided at the residence of an individual:

(a) Skilled nursing services;



- (b) Homemaker/home health aide services;
- (c) Physical therapy services;
- (d) Occupational therapy services;
- (e) Speech therapy services;
- (f) Nutritional services;
- (g) Respiratory therapy services;
- (h) Medical/social services; and
- (i) Such other related services as may be authorized by regulation of the board of health and welfare.

(5) "Home health agency" means any business entity that primarily provides skilled nursing services by licensed nurses and at least one (1) other health care service to an individual in that individual's place of residence.

(6) "Individual" means a natural person who is a recipient of provided health care services.

(7) "Skilled nursing services" mean those services provided by a state licensed nurse for the purpose of promoting, maintaining, or restoring the health of an individual or to minimize the effects of injury, illness, or disability.

**History.**

I.C., § 39-2402, as added by 1992, ch. 56,  
§ 2, p. 162.

**STATUTORY NOTES**

**Cross References.**

Board of health and welfare, § 56-1005.

**Prior Laws.**

Former § 39-2402 was repealed. See Prior Laws, § 39-2401.

**39-2403. Licensure required.** — After January 1, 1993, no private or public agency or organization may advertise, operate, manage, conduct, open, maintain, or hold itself out to the public to be a home health agency unless licensed by the department of health and welfare. The department may grant licenses without conducting a licensure survey to medicare certified agencies or agencies currently accredited by an accrediting body recognized by the health care financing administration [centers for medicare & medicaid services] pursuant to rules and regulations developed by the board prescribing the conditions under which these actions are made.

**History.**

I.C., § 39-2403, as added by 1992, ch. 56,  
§ 2, p. 162.

**STATUTORY NOTES**

**Cross References.**

Department of health and welfare, § 56-1001 et seq.

**Prior Laws.**

Former § 39-2403 was repealed. See Prior Laws, § 39-2401.

**Compiler's Notes.**

The bracketed insertion was added by the compiler to reflect the 2003 change in the

name of the referenced federal agency. See <http://www.cms.gov>.

**39-2404. Application — Issuance — Renewal — Denial.** — (1) An application for a license shall be made to the department upon forms provided by it and shall contain such information as it reasonably requires, which may include affirmative evidence of ability to comply with such reasonable standards, rules and regulations as are lawfully adopted by the board of health and welfare.

(2) Upon receipt of an application for license, the department shall issue a license if the applicant meets the requirements established under this chapter. A license, unless suspended or revoked, shall be renewable each and every year upon filing by the licensee, and approval by the department, of an annual report upon such uniform dates and containing such information in such form as the board prescribes by regulation. Each license shall be issued only for the premises and persons or governmental units named in the application and shall not be transferable or assignable except with the written approval of the department. Licenses shall be posted in a conspicuous place on the licensed premises.

(3) The department may deny any application or revoke any license when persuaded by evidence that such conditions exist as to endanger the health or safety of any patient, or which will violate the patients' bill of rights, or the home health agency does not meet requirements for licensure to the extent that it hinders its ability to provide quality services that comply with rules and regulations for home health agencies, or the home health agency has a history of repeat deficiencies. Before denial or revocation is final, the department shall provide opportunity for a hearing at which time the owner or sponsor of an agency may appear and show cause why the license should not be denied or revoked. The board shall provide by rule and regulation a procedure whereby a waiver of a specific rule, regulation or standard may be granted in the event that good cause is shown for such a waiver and providing that said waiver does not endanger the health, safety or rights of any patient. The decision to grant a waiver shall not be considered as precedent or be given any force or effect in any other proceeding. Said waiver may be renewed annually if sufficient written justification is presented to the department. Hearings for licensure, including denial and revocation, shall be conducted by the department pursuant to chapter 52, title 67, Idaho Code, and appeal shall be as provided therein.

**History.**

I.C., § 39-2404, as added by 1992, ch. 56, § 2, p. 162.

**STATUTORY NOTES****Cross References.**

Department of health and welfare, § 56-1001 et seq.

**Prior Laws.**

Former § 39-2404 was repealed. See Prior Laws, § 39-2401.

**39-2405. Rules, regulations, and enforcement.** — The board of health and welfare, with the advice of the advisory board of home health providers, shall have the authority to adopt, amend, and enforce such rules, regulations and standards with respect to all home health agencies to be licensed under the provision of this chapter as are designed to further the accomplishment of the purposes of this chapter in promoting safe and adequate treatment of individuals by home health agencies in the interest of public health, safety and welfare.

Provided that nothing in this chapter or the rules and regulations adopted pursuant thereto shall be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any home, facility or agency, conducted for those who rely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denomination.

**History.**

I.C., § 39-2405, as added by 1992, ch. 56,  
§ 2, p. 162.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-2405 was repealed. See Prior Laws, § 39-2401.

**39-2406. Inspections and consultations.** — The licensing agency shall make or cause to be made such inspections and investigations of home health agencies as it deems necessary, and may provide for consultations and conferences between agencies and the licensing agency.

**History.**

I.C., § 39-2406, as added by 1992, ch. 56,  
§ 2, p. 162.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-2406 was repealed. See Prior Laws, § 39-2401.

**39-2407. Information confidential.** — Information received by the department through filed reports, inspection, or as otherwise authorized under this chapter, shall not be disclosed publicly in such a manner as to identify individual patients of agencies, except in a proceeding involving the question of licensure. Public disclosure of information obtained by the department for the purposes of this chapter shall be governed by rules and regulations adopted by the board. Nothing in this chapter, however, shall be construed, nor shall any rule or regulation be promulgated under this section, as to impair, restrict or alter the confidentiality and privilege afforded the physician and patient communications, including without limitation, documentation thereof in records of agencies, or communications to and with nurses or other assisting persons or entities, nor shall this



chapter be construed to amend by implication such physician-patient communication privilege as provided elsewhere in this code, including without limitation, section 9-203(4), Idaho Code, which shall remain inviolate.

**History.**

I.C., § 39-2407, as added by 1992, ch. 56,  
§ 2, p. 162.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-2407 was repealed. See Prior Laws, § 39-2401.

**39-2408. Injunction to prevent operation without license.** — Notwithstanding the existence or pursuit of any other remedy, the department may in the manner provided by law maintain an action in the name of the state for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of an agency without a license required under this chapter.

The department shall be represented by the county prosecutor of the county in which the violation occurs or by the office of the attorney general.

**History.**

I.C., § 39-2408, as added by 1992, ch. 56,  
§ 2, p. 162.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

**Prior Laws.**

Former § 39-2408 was repealed. See Prior Laws, § 39-2401.

**39-2409. Bill of rights.** — A licensee shall provide each person or designated representative with a written bill of rights which shall be in substantially the same form as the currently effective version of regulations affecting patients' rights utilized for the medicare and medicaid programs.

**History.**

I.C., § 39-2409, as added by 1992, ch. 56,  
§ 2, p. 162.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-2409 was repealed. See Prior Laws, § 39-2401.

**39-2410. Use of terms limited.** — No person may use any words in its corporate or business name, or advertise using such words to indicate that it is licensed under the provisions of this chapter or provides the type of

services provided by an agency licensed under the provisions of this chapter unless it is in fact licensed as a home health agency under this chapter.

**History.**

I.C., § 39-2410, as added by 1992, ch. 56,  
§ 2, p. 162.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-2410 was repealed. See Prior  
Laws, § 39-2401.

**39-2411. Persons, activities or entities not subject to regulation under this chapter.** — The following are not subject to regulation for the purposes of this chapter:

- (1) A family member;
- (2) An organization that provides only meal service in a person's residence;
- (3) Entities furnishing durable medical equipment that does not involve the delivery of professional services beyond those necessary to set up and monitor the proper functioning of the equipment and educate the user on its proper use;
- (4) A professional licensed person who independently provides services in the home;
- (5) An employee or volunteer of an agency who provides nonprofessional services only as an employee or volunteer;
- (6) Facilities and institutions including, but not limited to, nursing homes, hospitals, boarding homes, developmental disability residential programs, or other facilities and institutions, only when providing services to persons residing within the facility or institution if the delivery of the services is regulated by the state;
- (7) Nursing homes, hospitals, or other institutions, agencies, organizations, or persons that contract with licensed home health, hospice, or home care agencies for the delivery of services;
- (8) In-home assessments by licensed professionals of an ill, disabled, or infirm person's ability to adapt to the home environment that does not result in regular ongoing care at home by that licensed professional;
- (9) Services conducted by and for the adherents of a church or religious denomination that rely upon spiritual means alone through prayer for healing in accordance with the tenets' beliefs genuinely held by such adherents;
- (10) A medicare approved dialysis center operating a medicare approved home dialysis program;
- (11) Case management services which do not include the direct delivery of home health, hospice, or home care services;
- (12) A medicare certified hospice agency; and
- (13) A state authorized personal assistance agency or personal assistant as defined in chapter 56, title 39, Idaho Code.

**History.**

I.C., § 39-2411, as added by 1992, ch. 56,  
§ 2, p. 162; am. 2000, ch. 274, § 8, p. 799.

**CHAPTER 25****SPEED, EQUIPMENT AND TRAFFIC REGULATIONS  
FOR BOATS AND WATERCRAFT****SECTION.**

39-2501 — 39-2548. [Repealed.]

**39-2501 — 39-2505. Operation and equipment of boats and watercraft. [Repealed.]**

**STATUTORY NOTES****Compiler's Notes.**

These sections, which comprised S.L. 1941,  
ch. 88, §§ 1 to 5, were repealed by S.L. 1971,

ch. 115, § 1, p. 395. For present comparable  
law, see § 67-7001 et seq.

**39-2506 — 39-2548. Watercraft — Speed, equipment and traffic regulations. [Repealed.]**

**STATUTORY NOTES****Compiler's Notes.**

These sections, which comprised S.L. 1961,  
ch. 279, §§ 1 to 28, p. 489; I.C., §§ 39-2534 to  
39-2538, as added by 1963, ch. 165, § 1, p.  
482; I.C., §§ 39-2539 to 39-2548, as added by

1965, ch. 220, § 1, p. 505; am. 1971, ch. 115,  
§§ 2 to 4, p. 395; am. 1976, ch. 169, § 1, p.  
620, were repealed by S.L. 1980, ch. 246, § 1,  
effective May 1, 1980. For present comparable  
law, see § 67-7001 et seq.

**CHAPTER 26****FIREWORKS****SECTION.**

39-2601. Short title.

39-2602. Definitions.

39-2603. Wholesale and import license required.

39-2604. Permit required for retail sales.

39-2605. Permit required for public display  
or other event using fireworks.

39-2606. Authorized dates for the sale and  
use of fireworks.

**SECTION.**

39-2607. Temporary fireworks stands.

39-2608. Short-term storage.

39-2609. General prohibitions.

39-2610. Exceptions.

39-2611. Liability of parents or guardians.

39-2612. Enforcement.

39-2613. Penalties — Injunctions.

39-2614. Rules.

39-2615 — 39-2630. [Repealed.]

**39-2601. Short title. —** This act shall be known and may be cited as the  
“Fireworks Act of 1997.”

**History.**

I.C., § 39-2601, as added by 1997, ch. 246,  
§ 2, p. 709.



## STATUTORY NOTES

**Prior Laws.**

Former § 39-2601, which comprised S.L. 1949, ch. 266, § 1, p. 535, was repealed by S.L. 1967, ch. 179, § 27.

**Compiler's Notes.**

The term "this act" refers to S.L. 1997, ch. 246, which is codified as §§ 39-3601 to 39-2614.

**39-2602. Definitions.** — As used in this chapter, these terms shall have the following meanings:

(1) "Authority having jurisdiction" means a city fire department if the area is within a city, or a fire protection district formed pursuant to provisions of the Idaho Code if the area is within a fire protection district, or the county commission if the area is not within a city or fire protection district.

(2) "Department" means the department of insurance, division of the state fire marshal.

(3) "Fireworks" means any combustible or explosive composition, or any substance or combination of substances, or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation. Fireworks include items classified as common or special fireworks by the United States bureau of explosives or contained in the regulations of the United States department of transportation and designated as UN 0335 1.3G or UN 0336 1.4G. The term "fireworks" shall not include any automotive safety flares, toy guns, toy cannons, caps or other items designed for use with toy guns or toy cannons, party poppers, pop-its or other devices which contain twenty-five hundredths (.25) of a grain or less of explosive substance.

(4) "Importer" means any person who, for any purpose other than personal use, or a use associated with a specific public display or other event permit, is the first receiver of any fireworks in this state.

(5) "License" means a nontransferable, formal authorization, issued by the department to engage in the acts of importing fireworks into this state or operating a wholesale fireworks business within this state.

(6) "Nonaerial common fireworks" means any fireworks such as ground spinners, fountains, sparklers, smoke devices or snakes designed to remain on or near the ground and not to travel outside a fifteen (15) foot diameter circle or emit sparks or other burning material which land outside a twenty (20) foot diameter circle or above a height of twenty (20) feet. Nonaerial common fireworks do not include firecrackers, jumping jacks, or similar products.

(7) "Permit" means an authorization given by the authority having jurisdiction pursuant to section 39-2604 or 39-2605, Idaho Code.

(8) "Special fireworks" means any fireworks designed primarily for display and classified as special fireworks by the United States bureau of explosives or designated as UN 0335 1.3G.

(9) "Wholesale" means sale of fireworks to a retailer or wholesaler.

**History.**

I.C., § 39-2602, as added by 1997, ch. 246, § 2, p. 709.

## STATUTORY NOTES

**Cross References.**

Fire protection districts, § 31-1401 et seq.  
State fire marshal, §§ 41-254 and 41-255.

**Prior Laws.**

Former § 39-2602, which comprised S.L. 1949, ch. 266, § 2, p. 535, was repealed by S.L. 1997, ch 246, § 1, effective March 20, 1997.

**Compiler's Notes.**

The bureau of explosives, referred to in subsection (2), is not an agency of the federal government. Most of the federal regulations of fireworks is by the bureau of alcohol, tobacco, firearms and explosives (ATF). For more on the bureau of explosives, see <http://boe.aar.com>.

**39-2603. Wholesale and import license required.** — (1) A license shall be required for any person to import fireworks into this state or to operate a wholesale fireworks business in this state.

(2) Fireworks shall only be delivered in this state by a person with a valid wholesale or import license under the following circumstances:

(a)(i) To a person with a valid sales tax seller's permit issued pursuant to section 63-3620, Idaho Code; and

(ii) During a period beginning sixty (60) days prior to a date on which the retail sale or use of nonaerial common fireworks is authorized under this chapter; or

(b) To a person with a valid permit issued pursuant to section 39-2605, Idaho Code, within a reasonable time period before the display or event.

(3) Possession of a wholesale or import license does not authorize the holder of the license to sell nonaerial common fireworks at retail, but a wholesaler or importer may also hold a retail permit in compliance with the provisions of this chapter.

(4) Wholesale or import licenses shall be issued for a twelve (12) month period beginning on March 31 each year and shall be nontransferable. The license shall be issued if the application is complete and in compliance with applicable law.

(5) Wholesale or import license applications shall be on a form approved by the department and shall include the name and address of the applicant (or the names of all partners, if a partnership, the name of the corporation and the corporate officers if a corporation, or the name of the limited liability company and all of its members, if a limited liability company) the primary location of the business, each location at which fireworks are to be stored and the applicant's Idaho sales tax seller's permit number, if applicable.

(6) A bond or valid certificate of public liability and property-casualty insurance providing coverage of at least one hundred thousand dollars (\$100,000) for personal injury and property damage shall be presented at the time of application.

(7) The department may impose a fee for issuing a license under this section which shall not exceed one hundred dollars (\$100).

(8) The license required under this section may be revoked if the licensee violates any provisions of this chapter. A license revocation proceeding shall comply with the provisions of chapter 52, title 67, Idaho Code.

(9) The license shall be displayed in public view at each location listed on the license.

(10) An importer or wholesaler shall keep a record of all wholesale transactions showing the name, address, sales tax seller's permit number, if applicable, and type and quantity of items sold.

**History.**

I.C., § 39-2603, as added by 1997, ch. 246,  
§ 2, p. 709.

**STATUTORY NOTES****Prior Laws.**

Former § 39-2603, which comprised S.L. 1949, ch. 266, § 3, p. 535, was repealed by S.L. 1997, ch. 246, § 1, effective March 20, 1997.

**Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

**39-2604. Permit required for retail sales.** — (1) The local authority having jurisdiction may require a permit for the retail sale of nonaerial common fireworks.

(2) If a permit is required the applications shall be on a form approved by the authority having jurisdiction and shall include the name and address of the applicant (or the names of all partners, if a partnership, the name of the corporation and the corporate officers if a corporation, or the name of the limited liability company and all of its members, if a limited liability company) the primary location of the business, each location at which fireworks are to be stored and the applicant's Idaho sales tax seller's permit number, if applicable.

(3) A bond or valid certificate of public liability and property-casualty insurance providing coverage of up to one hundred thousand dollars (\$100,000) for personal injury and property damage may be required at the time of application.

(4) The authority having jurisdiction may assess a fee for issuing a permit under this section which shall not exceed twenty-five dollars (\$25.00).

(5) The permit shall be issued if the application is complete and in compliance with applicable law, shall be valid for twelve (12) months from the date of issuance and shall be nontransferable.

(6) The permit required under this section may be revoked if the permittee violates any provisions of this chapter. A permit revocation proceeding shall comply with the provisions of chapter 52, title 67, Idaho Code.

(7) The permit shall be displayed in public view at the location listed on the permit.

**History.**

I.C., § 39-2604, as added by 1997, ch. 246,  
§ 2, p. 709.

**STATUTORY NOTES****Prior Laws.**

Former § 39-2604, which comprised S.L. 1949, ch. 266, § 4, p. 535, was repealed by S.L. 1997, ch. 246, § 1, effective March 20, 1997.

**Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.



**39-2605. Permit required for public display or other event using fireworks.** — (1) The authority having jurisdiction may, at its discretion, issue a permit for public display or other events in the following circumstances:

(a) After determining that the public display will be supervised by a qualified person and will not constitute an unreasonable hazard to persons or property. Appropriate national fire protection association or international fire code provisions may be used as guidance for this determination.

(b) After determining that sales and use of fireworks outside the normal sales period provided in section 39-2606, Idaho Code, or proposing the use of fireworks in addition to nonaerial common fireworks will not constitute an unreasonable hazard to persons or property.

(2) An application for a permit for public display or other event shall be on a form approved by, and contain the information reasonably requested by, the authority having jurisdiction.

(3) The permit shall be nontransferable, shall list the specific date or dates upon which the display or event shall occur and the types of fireworks and uses that will be allowed.

(4) A bond or valid certificate of public liability and property-casualty insurance providing coverage of up to one million dollars (\$1,000,000) for personal injury and property damage may be required at the time of application for public display of special fireworks.

(5) The authority having jurisdiction may assess a fee for issuing a permit for public display under this section which shall not exceed one hundred twenty-five dollars (\$125). There shall be no fee for the issuance of a permit for any event other than a public display event.

(6) Alteration of fireworks may be performed by a person in possession of a valid public display permit.

**History.**

I.C., § 39-2605, as added by 1997, ch. 246,  
§ 2, p. 709; am. 2002, ch. 86, § 4, p. 195.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-2605, which comprised S.L. 1967, ch. 179, § 1, p. 592, was repealed by S.L. 1997, ch. 246, § 1, effective March 20, 1997.

**Compiler's Notes.**

The national fire protection association dis-

seminates over 300 codes and standards intended to minimize the possibility and effects of fire. See <http://www.nfpa.org>.

The international fire code is promulgated by the international code council, which is dedicated to building safety and fire prevention. See <http://www.iccsafe.org>.

**39-2606. Authorized dates for the sale and use of fireworks.** — (1) Nonaerial common fireworks may be sold at retail and used beginning at midnight June 23, and ending at midnight July 5 and beginning at midnight December 26 and ending at midnight January 1. The authority having jurisdiction may at its discretion extend each period of sales by not more than five (5) days.

(2) Fireworks may be sold and used at any time in compliance with permits issued under the provisions of section 39-2605, Idaho Code.

**History.**

I.C., § 39-2606, as added by 1997, ch. 246,  
§ 2, p. 709.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-2606, which comprised S.L.  
1967, ch. 179, § 2, p. 592, was repealed by

S.L. 1997, ch. 246, § 1, effective March 20,  
1997.

**39-2607. Temporary fireworks stands.** — Retail sales of nonaerial common fireworks shall be allowed only from within a temporary fireworks stand unless the authority having jurisdiction finds appropriate circumstances justifying reasonable variance from strict compliance with this section. An existing permanent building which was used for the retail sale of fireworks in 1996 may continue to be used for that purpose if the building meets or exceeds the standards for temporary buildings established by this section and is operated, insofar as it is applicable, as provided by this section. Temporary fireworks stands shall be subject to the following provisions:

(1) A stand shall not be located within twenty-five (25) feet of any building or within one hundred (100) feet of the nearest fuel dispensing device.

(2) A stand shall meet the minimum structural stability requirements for temporary buildings as required by applicable local building codes. If no local building codes have been adopted, applicable state codes may be used.

(3) A stand shall meet the minimum requirements for temporary buildings for all lighting circuits or other electrical equipment used in conjunction with the operation of the stand as required by applicable local building codes or, if no local building codes have been adopted, by applicable state codes.

(4) A stand shall have two (2) exits, each a minimum of thirty (30) inches wide at each end of the stand or as near the ends as is practical in a mobile home conversion. One (1) additional door is required for each thirty-two (32) feet of rear wall in excess of thirty-two (32) feet. All doors shall open outward from the stand and shall be kept unlocked and unlatched during the hours of operation and free and clear of supplies and materials at all times.

(5) A stand shall have at least two (2) fire extinguishers with a 2A minimum rating, in good working order, with a current inspection tag in place, placed near the exits in a visible and readily accessible manner.

(6) "No smoking within 25 feet" signs shall be prominently displayed on all four (4) sides of the stand. Smoking shall not be permitted inside the stand.

(7) A stand shall not be erected before May 5 nor remain up after July 20 for the first sales period; nor shall it be erected before December 7 or remain up after January 16 for the second sales period. The premises on which the stand is erected shall be cleared of all structures and debris no later than July 20 or January 16, respectively.

(8) The fireworks stand operator shall not permit the discharge of fireworks within twenty-five (25) feet of the stand.

(9) The stand operator shall not allow any rubbish to accumulate in or around the stand causing a fire nuisance.

(10) Only noncombustible waste containers shall be permitted within the stand.

(11) Fireworks shall not be left in the stand when it is not open for business unless the stand is locked or secured. If fireworks are not stored in the stand they shall be stored in compliance with section 39-2608, Idaho Code.

(12) Notice as provided by the authority having jurisdiction cautioning each person purchasing fireworks of the prohibitions, liabilities and penalties incorporated in this chapter shall be posted at all retail locations.

(13) The authority having jurisdiction may charge a one (1) time inspection fee of twenty-five dollars (\$25.00) for inspection of a temporary fireworks stand.

**History.**

I.C., § 39-2607, as added by 1997, ch. 246,  
§ 2, p. 709.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-2607 which comprised S.L.

1967, ch. 179, § 3, p. 592 was repealed by S.L.

1997, ch. 246, § 1, effective March 20, 1997.

**39-2608. Short-term storage.** — (1) A short-term storage facility may be used for the storage of nonaerial common fireworks for a period of sixty (60) days prior to, and fifteen (15) days after, any authorized retail sales date. The authority having jurisdiction shall be notified of the address or location of all short-term storage facilities when fireworks will not be stored in a temporary fireworks stand. If the short-term storage facility is not within the boundaries of the jurisdiction having issued the retail sales permit the permittee shall notify the authority having jurisdiction where the storage is to take place.

(2) Short-term storage is allowed in any of the following, provided it is locked or otherwise secured: a temporary fireworks stand, truck, trailer, or other vehicle. A truck, trailer or other vehicle used for short-term storage must remain at least twenty-five (25) feet from the stand during any time the stand is open for business, but may abut the stand when it is closed. A truck, trailer or vehicle used for short-term storage must be at least twenty-five (25) feet from any other inhabited building. Short-term storage may occur in a locked or secured shed, garage, barn or other building or storage container which is detached from an inhabited building and contains no open flames, including heating and lighting sources. The authority having jurisdiction may, in its discretion, allow short-term storage to occur in an attached garage with a one (1) hour fire wall separating the garage from any inhabited area.



**History.**

I.C., § 39-2608, as added by 1997, ch. 246,  
§ 2, p. 709.

**STATUTORY NOTES****Compiler's Notes.**

Former § 39-2608, which comprised S.L.  
1967, ch. 179, § 4, p. 592; am. 1974, ch. 60,

§ 1, p. 1137 was repealed by S.L. 1997, ch.  
246, § 1, effective March 20, 1997.

**39-2609. General prohibitions.** — It shall be unlawful for any person, except in compliance with this chapter, to:

- (1) Alter any fireworks;
- (2) Throw any fireworks from, into, or at a moving vehicle or at any person;
- (3) Sell or use any fireworks at any time not permitted under this chapter;
- (4) Use fireworks in any area that constitutes a severe fire threat based on the vegetative conditions during the current fire season as determined by the county commission or authority having jurisdiction, provided that notice of such areas is given in advance.

**History.**

I.C., § 39-2609, as added by 1997, ch. 246,  
§ 2, p. 709.

**STATUTORY NOTES****Prior Laws.**

Former § 39-2609, which comprised S.L.  
1967, ch. 179, § 5; am. 1969, ch. 74, § 4, p.

224; am. 1974, ch. 60, § 2, p. 1137 was re-  
pealed by S.L. 1997, ch. 246, § 1, effective  
March 20, 1997.

**39-2610. Exceptions.** — The provisions of this chapter do not apply to and shall not prohibit:

- (1) The use of flares, noisemakers or signals designed and used for the purpose of protecting the public;
- (2) The use of blank cartridges;
- (3) The use of flares or noisemakers designed and labeled specifically for pest control purposes and approved by the Idaho department of fish and game;
- (4) The continued use of existing facilities for long-term storage of fireworks by wholesalers;
- (5) Manufacturing of fireworks in this state; and
- (6) The importation, storage and sale of fireworks for export from this state, or interstate commerce in fireworks.

**History.**

I.C., § 39-2610, as added by 1997, ch. 246,  
§ 2, p. 709.

## STATUTORY NOTES

**Cross References.**

Fish and game department, § 36-101 et seq.

1967, ch. 179, § 6, p. 592; am. 1969, ch. 74, § 2, p. 224, was repealed by S.L. 1997, ch. 246, § 1, effective March 20, 1997.

**Prior Laws.**

Former § 39-2610, which comprised S.L.

**39-2611. Liability of parents or guardians.** — The parents, guardians or other persons having custody or control of a minor shall be liable for damage caused by the use of fireworks by the minor.

**History.**

I.C., § 39-2611, as added by 1997, ch. 246, § 2, p. 709.

## STATUTORY NOTES

**Prior Laws.**

Former § 39-2611, which comprised S.L. 1967, ch. 179, § 7, p. 592, was repealed by

S.L. 1997, ch. 246, § 1, effective March 20, 1997.

**39-2612. Enforcement.** — This chapter shall be enforced by the department, cities, counties, fire protection districts or other law enforcement agencies of the state.

**History.**

I.C., § 39-2612, as added by 1997, ch. 246, § 2, p. 709.

## STATUTORY NOTES

**Prior Laws.**

Former § 39-2612, which comprised S.L. 1967, ch. 179, § 8, p. 592, was repealed by

S.L. 1997, ch. 246, § 1, effective March 20, 1997.

**39-2613. Penalties — Injunctions.** — Any person violating the provisions of this chapter or any rules issued hereunder is guilty of a misdemeanor. Notwithstanding the existence or use of any other penalty or remedy, any person who violates the provisions of this chapter or any of the rules promulgated pursuant to this chapter may, upon application to or with written consent of the authority having jurisdiction, be enjoined in the manner provided by law from continuing the violation. Fireworks being used in violation of this chapter may be confiscated by the authority having jurisdiction.

**History.**

I.C., § 39-2613, as added by 1997, ch. 246, § 2, p. 709.

STATUTORY NOTES

**Cross References.**

Penalty for misdemeanor when not otherwise provided, § 18-113.

1967, ch. 179, § 9, p. 592, was repealed by S.L. 1997, ch. 246, § 1, effective March 20, 1997.

**Prior Laws.**

Former § 39-2613, which comprised S.L.

**39-2614. Rules.** — The department may adopt any rules necessary to carry out the provisions of this chapter which are consistent with the provisions of this chapter and which are necessary to carry out its duties under the provisions of this chapter.

**History.**

I.C., § 39-2614, as added by 1997, ch. 246, § 2, p. 709.

STATUTORY NOTES

**Compiler's Notes.**

Former § 39-2614, which comprised S.L. 1997, ch. 179, § 10, p. 592, was repealed by S.L. 1997, ch. 246, § 1, effective March 20, 1997.

**Effective Dates.**

Section 3 of S.L. 1997, ch. 246 declared an emergency. Approved March 20, 1997.

**39-2615 — 39-2630. Fireworks package — Application to display — Special permit — Labeling — Sale of fireworks — Penalty — Exemptions — Permit fee — Regulation by city ordinance. [Repealed.]**

STATUTORY NOTES

**Compiler's Notes.**

These sections, which comprised S.L. 1967, ch 179, §§ 11 to 26, p. 592; am. 1969, ch. 74, § 3, p. 224; am. 1970, ch. 146, § 1, p. 441;

I.C., § 39-2629A, as added by 1970, ch. 146, § 2, p. 441, were repealed by S.L. 1997, ch. 246, § 1, effective March 20, 1997. For present comparable law, see § 39-2601 et seq.

CHAPTER 27

PLUMBING AND PLUMBERS

SECTION.

39-2701 — 39-2705. [Amended and redesignated.]  
39-2706 — 39-2710. [Repealed.]

SECTION.

39-2711 — 39-2735. [Amended and redesignated.]

**39-2701. [Amended and redesignated.]**

STATUTORY NOTES

**Compiler's Notes.**

Former § 39-2701 was amended and redesignated as § 54-2601 by § 1 of S.L. 1984, ch. 123.



**39-2702. [Amended and redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 39-2702 was amended and redesi-

gnated as § 54-2602 by § 2 of S.L. 1984, ch. 123.

**39-2703. [Amended and redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 39-2703 was amended and redesi-

gnated as § 54-2603 by § 3 of S.L. 1984, ch. 123.

**39-2704. [Amended and redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 39-2704 was amended and redesi-

gnated as § 54-2604 by § 4 of S.L. 1984, ch. 123.

**39-2705. [Amended and redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 39-2705 was amended and redesi-

gnated as § 54-2605 by § 5 of S.L. 1984, ch. 123.

**39-2706 — 39-2710. Board members — Qualifications — Offices — Organization — Compensation. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

These sections, which comprised 1957, ch. 214, §§ 6 to 10, p. 454; am. 1974, ch. 39, §§ 27, 28, p. 1023; am. 1975, ch. 120, § 2, p.

250; 1980, ch. 247, § 36, p. 582, were repealed by S.L. 1984, ch. 123, § 6, effective March 31, 1984. For present comparable law, see § 54-2601 et seq.

**39-2711. [Amended and redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 39-2711 was amended and redesi-

gnated as § 54-2606 by § 7 of S.L. 1984, ch. 123.

**39-2712. [Amended and redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 39-2712 was amended and redesi-

gnated as § 54-2607 by § 8 of S.L. 1984, ch. 123.

**39-2713. [Amended and redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 39-2713 was amended and redes-

ignated as § 54-2608 by § 9 of S.L. 1984, ch. 123.

**39-2714. [Amended and redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 39-2714 was amended and redes-

ignated as § 54-2609 by § 10 of S.L. 1984, ch. 123.

**39-2715. [Amended and redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 39-2715 was amended and redes-

ignated as § 54-2610 by § 11 of S.L. 1984, ch. 123.

**39-2716. [Amended and redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 39-2716 was amended and redes-

ignated as § 54-2611 by § 12 of S.L. 1984, ch. 123.

**39-2717. [Amended and redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 39-2717 was amended and redes-

ignated as § 54-2612 by § 13 of S.L. 1984, ch. 123.

**39-2718. [Amended and redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 39-2718 was amended and redes-

ignated as § 54-2613 by § 14 of S.L. 1984, ch. 123.

**39-2719. [Amended and redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 39-2719 was amended and redes-

ignated as § 54-2614 by § 15 of S.L. 1984, ch. 123.

**39-2720. [Amended and redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 39-2720 was amended and redesi-

gnated as § 54-2615 by § 16 of S.L. 1984, ch. 123.

**39-2721. [Amended and redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 39-2721 was amended and redesi-

gnated as § 54-2616 by § 17 of S.L. 1984, ch. 123.

**39-2722. [Amended and redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 39-2722 was amended and redesi-

gnated as § 54-2617 by § 18 of S.L. 1984, ch. 123.

**39-2723. [Amended and redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 39-2723 was amended and redesi-

gnated as § 54-2618 by § 19 of S.L. 1984, ch. 123.

**39-2724. [Amended and redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 39-2724 was amended and redesi-

gnated as § 54-2619 by § 20 of S.L. 1984, ch. 123.

**39-2725. [Amended and redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 39-2725 was amended and redesi-

gnated as § 54-2620 by § 21 of S.L. 1984, ch. 123.

**39-2726. [Amended and redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 39-2726 was amended and redesi-

gnated as § 54-2621 by § 22 of S.L. 1984, ch. 123.



**39-2727. [Amended and redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 39-2727 was amended and redes-

ignated as § 54-2622 by § 23 of S.L. 1984, ch. 123.

**39-2728. [Amended and redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 39-2728 was amended and redes-

ignated as § 54-2623 by § 24 of S.L. 1984, ch. 123.

**39-2729. [Amended and redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 39-2729 was amended and redes-

ignated as § 54-2624 by § 25 of S.L. 1984, ch. 123.

**39-2730. [Amended and redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 39-2730 was amended and redes-

ignated as § 54-2625 by § 26 of S.L. 1984, ch. 123.

**39-2731. [Amended and redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 39-2731 was amended and redes-

ignated as § 54-2626 by § 27 of S.L. 1984, ch. 123.

**39-2732. [Amended and redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 39-2732 was amended and redes-

ignated as § 54-2627 by § 28 of S.L. 1984, ch. 123.

**39-2733. [Amended and redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 39-2733 was amended and redes-

ignated as § 54-2628 by § 29 of S.L. 1984, ch. 123.

**39-2734. [Amended and redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 39-2734 was amended and red-

esignated as § 54-2629 by § 30 of S.L. 1984, ch. 123.

**39-2735. [Amended and redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 39-2735 was amended and red-

esignated as § 54-2630 by § 31 of S.L. 1984, ch. 123.

**CHAPTER 28****ABATEMENT DISTRICTS****SECTION.**

39-2801. Definitions.

39-2801A. Authorization to form abatement districts.

39-2802. Procedures for formation of abatement districts.

39-2803. Selection of officials of abatement districts.

39-2804. Powers and duties of abatement districts.

39-2805. Method of financing abatement districts.

39-2806. Annexation to abatement districts.

**SECTION.**

39-2807. Consolidation of abatement districts.

39-2808. Existing rights preserved.

39-2809. Short title.

39-2810. Withdrawal.

39-2811. Hearing of petition for withdrawal.

39-2812. Pests — Public health and welfare  
— Disasters — Emergencies  
— Interim abatement districts.

39-2813. Operation of abatement districts by county.

39-2814. Severability.

**39-2801. Definitions. —** When used in this chapter:

(1) "Vector" means an animal, such as an insect, that transmits a disease producing organism from one host to another.

(2) "Vermin" means small animals, including insects, of public health and welfare concern which are difficult to control when they appear in large numbers.

**History.**

I.C., § 39-2801, as added by 2007, ch. 188,  
§ 2, p. 548.

**STATUTORY NOTES****Compiler's Notes.**

Former § 39-2801 was amended and redesignated as § 39-2801A by S.L. 2007, ch. 188, § 3.

The term "vector," although defined in this section, does not appear anywhere else in this chapter.

**Effective Dates.**

Section 15 of S.L. 2007, ch. 188 declared an emergency. Approved March 26, 2007.

**39-2801A. Authorization to form abatement districts. —** There may be formed, under the provisions of this chapter, districts for the abatement of mosquitoes or other vermin of public health and welfare

importance, in any area of the state from territory of one (1) or more counties, one (1) or more cities or towns, or any combination or portion thereof. No district shall contain noncontiguous areas except where a noncontiguous area of land consisting of not less than forty (40) contiguous acres, is separated from the district by public property owned by the federal, state or local government, such noncontiguous land may be included in the district by election or agreement of the private property owners. Any abatement district formed under this chapter, including an interim district formed under the provisions of section 39-2812, Idaho Code, shall be governed by the provisions of section 39-2804, Idaho Code.

**History.**

1959, ch. 81, § 1, p. 186; am. and redesign.

2007, ch. 188, § 3, p. 548.

**STATUTORY NOTES****Amendments.**

The 2007 amendment, by ch. 188, renumbered the section from § 39-2801 and in the first sentence, substituted "chapter" for "act" and "or other vermin" for "and/or other vermin," and inserted "and welfare"; and added the last two sentences.

**Effective Dates.**

Section 15 of S.L. 2007, ch. 188 declared an emergency. Approved March 26, 2007.

**39-2802. Procedures for formation of abatement districts. —**

(1) Abatement districts may be formed in the following ways:

(a) Upon presentation to the board of county commissioners of a petition requesting the formation of an abatement district, which is signed by property owners of the territory of the proposed abatement district, equal to not less than ten percent (10%) of the property owners within the proposed district, the commissioners shall publish such petition when the following conditions are met: the petition must define the boundaries of the proposed district and assessed tax valuation of the property therein. When the above conditions have been met the county commissioners shall publish the petition, and if after thirty (30) days no protests are received, an election must be held on a regularly scheduled election date specified in section 34-106, Idaho Code. The abatement district shall bear the expense of holding their portion of the election upon their successful formation from the first tax moneys collected. If there are written protests, the county commissioners must hold a public hearing within thirty (30) days after receipt of the written protests and after the hearing hold an election. Notice of the time and place of such election shall be published at least once not less than twelve (12) days prior to the election and a second time not less than five (5) days prior to the election in at least one (1) newspaper having general circulation in the proposed abatement district.

(b) The board of county commissioners may place the question on a ballot during either a primary or general election as to whether to create an abatement district. If the board of county commissioners determines to place such a question on the ballot, it shall be after they define the boundaries of the proposed district and assessed tax valuation of the



property therein. Notice of the time and place of such election shall be published at least once not less than twelve (12) days prior to the election and a second time not less than five (5) days prior to the election in at least one (1) newspaper having general circulation in the proposed abatement district.

(2) No person shall be entitled to vote at any election held under the provisions of this chapter unless he shall possess all the qualifications required of electors under the general laws of the state and be a resident of the proposed district. A majority of the votes cast by the qualified electors shall establish the district.

#### **History.**

1959, ch. 81, § 2, p. 186; am. 1995, ch. 118, § 56, p. 417; am. 2007, ch. 188, § 4, p. 548.

### **STATUTORY NOTES**

#### **Amendments.**

The 2007 amendment, by ch. 188, added the introductory language in subsection (1); designated the former section as subsection (1)(a), and therein, in the first sentence, deleted “qualified resident” preceding the first occurrence of “property owners,” and substituted “ten percent (10%) of the property owners within the proposed district” for “ten percent (10%) of the resident property owners that voted in the last general election” and “must be held on a regularly scheduled election date” for “must be held at the next date”; in the second sentence, substituted “abatement district” for “petitioners,” and inserted “their portion of” and “upon their successful

formation from the first tax moneys collected”; and deleted the former last two sentences, which read: “Only qualified electors who own land within the district, or the proposed district, and are residents of the county in which the district, or a portion thereof, is located, or are spouses of such landowners residing in such county, may vote on the formation of the district. A majority of the votes cast will establish the district”; and added subsections (1)(b) and (2).

#### **Effective Dates.**

Section 15 of S.L. 2007, ch. 188 declared an emergency. Approved March 26, 2007.

**39-2803. Selection of officials of abatement districts.** — A five (5) member board of trustees shall be appointed from within the area of the proposed abatement district to govern the abatement district. The trustees appointed shall at the first meeting of each year elect a president, secretary and treasurer to serve during the ensuing year. The officers of the board shall be bonded to the extent of five hundred dollars (\$500) to five thousand dollars (\$5,000) each as set by the county commissioners. The members of the board shall be appointed by the county commissioners of the county which they are to represent. When two (2) or more counties or portions thereof comprise an abatement district, the selection of trustees will be made by mutual agreement of the county commissioners concerned. Each trustee shall be a resident property owner and a registered voter. Trustees shall be appointed for four (4) years on staggered appointments. To initiate the board two (2) members are appointed for two (2) years, one (1) for three (3) years and two (2) for four (4) years. Subsequent appointments shall be for four (4) years. Trustees shall serve without compensation but will be reimbursed for necessary expenses involved with the performance of their official duties. The county health officer and the county agent shall be ex officio members of the board. Whenever two (2) or more counties or portions thereof are included in the district, the health officer and county agent for

each county shall be ex officio members of the board. The directors or heads of the following state departments or their designated representatives shall be considered ex officio members of the board and may be called upon for their advice and assistance in the handling of abatement problems affecting their direct interests: agriculture, fish and game, lands, transportation, water resources and health and welfare.

**History.**

1959, ch. 81, § 3, p. 186; am. 1974, ch. 18, § 226, p. 364; am. 1974, ch. 23, § 141, p. 633.

**STATUTORY NOTES****Amendments.**

This section was amended twice in 1974 by § 226 of ch. 18, approved February 21, 1974, and § 141 of ch. 23, approved February 21, 1974. Since § 141 of ch. 23 was the last signed by the governor, it has been set out above as the section. Section 226 of ch. 18 inserted the words "directors or" preceding "heads of the" in the last sentence. All other changes made by both laws were identical except that the

words "health and welfare" in the last clause followed "fish and game" instead of appearing at the end.

**Effective Dates.**

Section 263 of S.L. 1974, ch. 18 provided the act should be in full force and effect on and after July 1, 1974.

**39-2804. Powers and duties of abatement districts.** — The abatement district board of trustees is authorized:

(1) To appoint a director to direct the activities of the district, in accordance with training and experience necessary to fulfill the duties of the position.

(2) To appoint such other persons as necessary, determine their duties and compensation, and make rules and regulations respecting them.

(3) To take all necessary and proper steps for the control of mosquitoes and other vermin of public health and welfare importance in the district and for these purposes shall have the right to enter upon any and all lands.

(4) To sue and be sued.

(5) To contract to purchase, hold, dispose of, and acquire by gift real and personal property in the name of the district. To exercise the right of eminent domain and for these purposes to condemn any necessary land or rights-of-way in accordance with general law.

(6) To abate as nuisance breeding places of mosquitoes or other vermin of public health and welfare importance within the district or within migrating distance of the district by use of chemicals or permanent control measures and in this connection have the right to enter upon any and all lands.

(7) To work with the lateral ditch water users associations, irrigation, drainage and flood control districts and other cooperating organizations. The board of trustees of the abatement district may supplement funds of cooperating organizations for improvement, repair, maintenance and cleaning of ditches which will temporarily or permanently eliminate mosquito breeding or for other activities which will benefit the district.

(8) To file annually with the board of county commissioners for their approval an estimate of funds required for the next year, a plan of the work to be done, and methods to be employed. No procedure, work or contract for any year of operation shall be done or entered upon until plans and budget have been jointly approved by the board of county commissioners.



(9) To file, annually or by February 1 of the succeeding year, with the board of county commissioners a report setting forth the moneys expended during the previous year, methods employed, and work accomplishments.

(10) To approve a written mosquito or other vermin management plan submitted by a landowner requesting that their property be excluded from treatment by the abatement district. Such plan must be specific to the landowner's property, provide adequate control measures, and be implemented by the landowner. The abatement district shall refrain from treatment of property included in the approved plan, but shall maintain monitoring and surveillance activities. If the landowner fails to follow the plan or does not provide adequate control measures, the abatement district may abate the mosquitoes or other vermin.

(11) To cooperate with other entities. At its discretion, a district may cooperate with and enter into annual agreements or contract with governmental agencies of this state, other states, agencies of the federal government, private associations, and private individuals in order to carry out the purposes and provisions of this chapter.

**History.**

1959, ch. 81, § 4, p. 186; am. 1974, ch. 23,

§ 142, p. 633; am. 1993, ch. 199, § 1, p. 548; am. 2007, ch. 188, § 5, p. 548.

**STATUTORY NOTES****Amendments.**

The 2007 amendment, by ch. 188, in subsections (3) and (6), inserted "and welfare"; in subsections (5) and (6), substituted "or" for "and/or"; redesignated the subsections and added subsections (10) and (11).

**Effective Dates.**

Section 15 of S.L. 2007, ch. 188 declared an emergency. Approved March 26, 2007.

**39-2805. Method of financing abatement districts.** — The board of county commissioners must levy upon taxable property within the district a tax at a rate not greater than sufficient to raise the amount determined by the board of trustees as approved by the board of county commissioners, as necessary for the operation of the district for the ensuing year. In no event shall such tax exceed one tenth percent (.1%) of the market value for assessment purposes on all taxable property within the district. All taxes thus levied shall be collected in the same manner as other taxes and deposited to the credit of the abatement district and shall be used for no other purposes. Such funds may be withdrawn from the county treasury and upon warrant of the board of trustees of the abatement district, signed by the president of the board and countersigned by its secretary, for the activities of the abatement district.

**History.**

1959, ch. 81, § 5, p. 186; am. 1974, ch. 23,

§ 143, p. 633; am. 1993, ch. 199, § 2, p. 548; am. 1995, ch. 82, § 17, p. 218.

**STATUTORY NOTES****Effective Dates.**

Section 182 of S.L. 1974, ch. 23 provided the

act should be in full force and effect on and after July 1, 1974.



**39-2806. Annexation to abatement districts.** — Contiguous territories may be annexed to organized abatement districts upon petition of a majority of the legal voters in the territory seeking annexation and of the owners of more than half, by assessed value, of the taxable property in such territory, or by written request for annexation of a designated area, submitted to the trustees of the existing abatement district and signed by all members of the board of county commissioners in which county the territory seeking annexation is located. For annexations that will increase the size of an existing contiguous district, there shall be no size restriction on the property being annexed. Noncontiguous areas shall not be annexed unless the area meets the provisions of section 39-2801A, Idaho Code. Upon receiving this petition or written request, the trustees of the existing abatement district must submit the question of annexation to the legal voters of the district at an election held subject to the provisions of section 34-106, Idaho Code.

**History.**

1959, ch. 81, § 6, p. 186; am. 1993, ch. 81,

§ 1, p. 211; am. 1995, ch. 118, § 57, p. 417;  
am. 2007, ch. 188, § 6, p. 548.

**STATUTORY NOTES**

**Amendments.**

The 2007 amendment, by ch. 188, in the first and last sentences, deleted “mosquito” preceding “abatement,” and added the second sentence.

**Effective Dates.**

Section 15 of S.L. 2007, ch. 188 declared an emergency. Approved March 26, 2007.

**39-2807. Consolidation of abatement districts.** — Two (2) or more contiguous districts may be consolidated. Any district board of trustees may seek consolidation by adoption of a resolution by a majority vote of its members. Consolidation is accomplished by a majority vote of the members of each of the boards of trustees involved in the consolidation. The consolidated districts may enter into arrangements for pooling funds and joint use of personnel, equipment, and supplies. The activities conducted under joint arrangement shall be considered as if conducted directly by the board having jurisdiction over the area concerned. The board of county commissioners must be given written notice of consolidation.

**History.**

1959, ch. 81, § 7, p. 186; am. 1993, ch. 199,  
§ 3, p. 548.

**STATUTORY NOTES**

**Compiler’s Notes.**

Section 8 of S.L. 1959, ch. 81 read: “The provisions of this act are hereby declared to be

separable and, if any part hereof is unconstitutional, such shall not affect the validity of the other portions of this act.”

**39-2808. Existing rights preserved.** — It is the purpose of this act to provide additional and cumulative remedies to prevent, abate and control the spread of mosquitoes and/or other vermin affecting the public health, safety and welfare of the people of the state of Idaho. Nothing herein

contained shall be construed to abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor shall any provision of this act, or an act done by virtue thereof, be construed as estopping the state or any municipality or person in the exercise of their rights of equity or under the common law or statutory law to suppress or abate nuisances.

**History.**

1959, ch. 81, § 9, p. 186.

**STATUTORY NOTES****Compiler's Notes.**

The term "this act" refers to S.L. 1959, ch. 81, which is codified as §§ 39-2801A to 39-2809.

**39-2809. Short title.** — This chapter may be cited as the "Idaho Mosquito and Vermin Abatement Act."

**History.**

1959, ch. 81, § 10, p. 186; am. 2007, ch. 188, § 7, p. 548.

**STATUTORY NOTES****Amendments.**

The 2007 amendment, by ch. 188, substituted "chapter" for "act," and inserted "and Vermin."

**Effective Dates.**

Section 15 of S.L. 2007, ch. 188 declared an emergency. Approved March 26, 2007.

**39-2810. Withdrawal.** — Any portion of an abatement district which will not be reasonably benefited by remaining within such district may be withdrawn as in this section provided. Upon receiving a petition signed by fifty (50) or more landowners within the portion desired to be withdrawn from any abatement district, or by a majority of such landowners, if there are less than one hundred (100) landowners within the portion sought to be withdrawn, requesting the withdrawal of such portion from the district on the ground that such portion will not be reasonably benefited by remaining in said district, the board of county commissioners shall fix a time for hearing on such petition and for hearing protests to the continuance of the remaining territory as an abatement district. The hearing shall not be less than ten (10) days nor more than thirty (30) days after the receipt thereof. The board shall, at least one (1) week prior to the time so fixed, publish notice of such hearing by one (1) publication in a newspaper of general circulation in the district, which the board deems most likely to give notice to the inhabitants thereof, of the proposed withdrawal.

**History.**

I.C., § 39-2810, as added by 1965, ch. 177, § 1, p. 363; am. 2007, ch. 188, § 8, p. 548.

## STATUTORY NOTES

**Amendments.**

The 2007 amendment, by ch. 188, in the first and second sentences, deleted “mosquito” preceding “abatement district.”

**Effective Dates.**

Section 15 of S.L. 2007, ch. 188 declared an emergency. Approved March 26, 2007.

**39-2811. Hearing of petition for withdrawal.** — Any person interested may appear at the hearing and object to the withdrawal of the portion from the district, or may object to the continuance of the remaining territory as an abatement district. The board of county commissioners shall consider all objections and shall pass upon the same, and if it finds that portion of the district sought to be withdrawn will not be reasonably benefited by remaining within the district, and the territory not sought to be withdrawn will be reasonably benefited by continuing as an abatement district, it shall grant the petition and enter an order thereon upon its records. In the event the board finds the district will not be reasonably benefited by continuing as an abatement district, it shall enter an order upon its records completely dissolving and terminating the previously existing abatement district. Upon the withdrawal of any territory from an abatement district, as in this section provided, all property acquired for the district shall remain vested in the county and be used for the purposes of the district. Upon complete dissolution of an abatement district as herein provided, all property acquired for the district shall remain vested in the county and be used for any general purpose of the county.

**History.**

I.C., § 39-2811, as added by 1965, ch. 177, § 1, p. 363; am. 2007, ch. 188, § 9, p. 548.

## STATUTORY NOTES

**Amendments.**

The 2007 amendment, by ch. 188, deleted “mosquito” preceding “abatement district” throughout the section.

**Effective Dates.**

Section 15 of S.L. 2007, ch. 188 declared an emergency. Approved March 26, 2007.

**39-2812. Pests — Public health and welfare — Disasters — Emergencies — Interim abatement districts.** — (1) To provide for the timely response to an elevated or anticipated pest population that may constitute a risk to public health and welfare, the board of county commissioners of each county of this state, in collaboration with duly recognized local and state officials, and after a public hearing is called for such purpose as a special meeting pursuant to the provisions of section 67-2343(2), Idaho Code, is hereby granted full power and authority to declare such pests as public health and welfare pests, and to initiate activities to hinder in the potential spread of disease, or adverse economic impact, caused by these pests by taking appropriate steps to intervene in the natural biological cycle of the pests or disease.

(2) Boards of county commissioners are further authorized and empowered, in the event of a disaster or emergency declared by such boards, to make direct appropriations for the purpose of controlling public health and



welfare pests as declared pursuant to this section. All moneys raised by direct appropriation shall be placed in a county public health and welfare pest fund, which shall be used exclusively for the control of pests of public health and welfare significance and for payment of all necessary expenses incurred in such control program. In addition, the county may impose an annual property tax assessment pursuant to section 39-2805, Idaho Code, and in accordance with the provisions of sections 63-802 and 63-803, Idaho Code, for the term of the disaster or emergency or until all expenses incurred during the disaster or emergency have been recovered. Such fund shall be a revolving fund and all moneys returned to the fund under any of the provisions of this chapter shall continue to be available for the operation of the control program.

(3) The disaster or emergency declaration of a pest of public health and welfare significance within a county and subsequent pest management activity shall, except as provided herein, place the whole county into an interim abatement district for administrative purposes for no more than two (2) years. The transition of an interim abatement district into a formally defined abatement district, shall be brought to a vote of the electorate within twenty-four (24) months of the declaration, subject to the notification and establishment requirements provided in this chapter and conducted during a general election held on the first Tuesday following the first Monday in November of even numbered years, and if passed, the district shall be recognized and the provisions of this chapter shall be implemented. If the measure fails, the balance of revolving fund moneys shall be distributed as required by state law. In the event the disaster or emergency exceeds the county's capacity or resources, provisions should be made to request state or federal disaster or emergency funds to address the evolving situation. If the interim abatement district provides the same service as an existing abatement district, the interim abatement district shall exclude any area within an existing abatement district.

**History.**

I.C., § 39-2812, as added by 2007, ch. 188,  
§ 10, p. 548.

**STATUTORY NOTES****Effective Dates.**

Section 15 of S.L. 2007, ch. 188 declared an emergency. Approved March 26, 2007.

**39-2813. Operation of abatement districts by county.** — Any district board of trustees may seek operation of the district by the board of county commissioners by adoption of a resolution by a majority vote of its members and by a majority vote of the board of county commissioners. The board of county commissioners may provide by ordinance that the abatement district board of trustees shall function as an advisory board to the board of county commissioners. If such an ordinance is adopted, the board of county commissioners shall retain and may exercise the powers, duties and responsibilities otherwise charged to the abatement district board of trust-

ees by the provisions of this chapter. Any such ordinance shall set forth the powers, duties, responsibilities, compensation, and terms of office of the abatement advisory board and may provide for any such other rules under which the abatement advisory board shall advise the board of county commissioners and conduct its operations. Any such ordinance may be repealed at any time and, if repealed, the provisions of this chapter shall apply as if no such ordinance had been adopted.

**History.**

I.C., § 39-2813, as added by 2007, ch. 188,  
§ 11, p. 548.

**STATUTORY NOTES**

**Effective Dates.**

Section 15 of S.L. 2007, ch. 188 declared an  
emergency. Approved March 26, 2007.

**39-2814. Severability.** — The provisions of this chapter are hereby declared to be severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this chapter.

**History.**

I.C., § 39-2814, as added by 2007, ch. 188,  
§ 12, p. 548.

**STATUTORY NOTES**

**Effective Dates.**

Section 15 of S.L. 2007, ch. 188 declared an  
emergency. Approved March 26, 2007.

**CHAPTER 29**  
**ENERGY EFFICIENT STATE BUILDINGS**  
**[EFFECTIVE UNTIL JULY 1, 2013]**

**SECTION.**

39-2901. Short title. [Effective until July 1,  
2013 — See Compiler’s Notes.]  
39-2902. Legislative findings and intent. [Ef-  
fective until July 1, 2013 —  
See Compiler’s Notes.]

**SECTION.**

39-2903. Definitions. [Effective until July 1,  
2013 — See Compiler’s Notes.]  
39-2904. Major facility projects. [Effective  
until July 1, 2013 — See Com-  
piler’s Notes.]

**39-2901. Short title. [Effective until July 1, 2013 — See Compiler’s Notes.]** — This chapter shall be known and cited as the “Idaho Energy Efficient State Buildings Act.”

**History.**

I.C., § 39-2901, as added by 2008, ch. 274,  
§ 1, p. 780.

### STATUTORY NOTES

#### Prior Laws.

Former §§ 39-2901 to 39-2915, which comprised S.L. 1967, ch. 361, §§ 1 to 8, 11 to 14, p. 1034; I.C., § 39-2901A, as added by 1971, ch. 260, § 2, p. 1040; I.C., § 39-2909, as added by 1971, ch. 260, § 4, p. 1040; I.C., § 39-2910, as added by 1971, ch. 260, § 5, p. 1040; I.C., § 39-2915, as added by 1971, ch. 260, § 7, p. 1040; am. 1971, ch. 260, §§ 3, 6, p. 1040, were repealed by S.L. 1972, ch. 347, § 13, p. 1017.

Former §§ 39-2916 to 39-2918, which comprised S.L. 1967, ch. 361, §§ 16 to 18, p. 1034, were repealed by S.L. 1971, ch. 260, § 1.

Former §§ 39-2919 to 39-2933, which comprised S.L. 1967, ch. 361, §§ 19-23, p. 1034; am. 1969, ch. 185, § 1, p. 550; am. 1969, ch. 330, § 1, p. 1037; I.C., § 39-2928, as added by 1971, ch. 260, §§ 9 to 17, p. 1040; am. 1971, ch. 260, § 8, p. 1040, were repealed by S.L. 1972, ch. 347, § 13, p. 1017.

#### Compiler's Notes.

Section 2 of S.L. 2008, ch. 274 provided "The provisions of this act shall be null, void and of no force and effect on and after July 1, 2013."

**39-2902. Legislative findings and intent. [Effective until July 1, 2013 — See Compiler's Notes.]** — (1) The legislature finds that serious energy challenges face the state of Idaho and that the operation of Idaho state buildings consumes significant amounts of energy and electricity.

(2) The legislature finds that, with minimal if any additional cost, there is considerable potential for energy savings and operational cost savings in the operation of both new and renovated state buildings if they are designed and constructed to an energy savings target over and above the state building code requirements.

(3) The legislature finds that by adopting energy savings measures into the design and construction of state buildings the state has an opportunity to demonstrate leadership to the private sector and to local government and to provide both an environmental and a fiscal benefit for Idaho's citizens.

(4) It is the intent and established goal of the legislature to adopt an energy performance target, including operational cost savings, for state buildings and thereby reduce consumption of and dollars spent for energy by the state of Idaho, and to have the state agencies occupying such buildings document and report the costs of the buildings' design, construction and operation and the cost savings associated therewith.

#### History.

I.C., § 39-2902, as added by 2008, ch. 274, § 1, p. 781.

### STATUTORY NOTES

#### Prior Laws.

Former § 39-2902 was repealed. See Prior Laws, § 39-2901.

"The provisions of this act shall be null, void and of no force and effect on and after July 1, 2013."

#### Compiler's Notes.

Section 2 of S.L. 2008, ch. 274 provided

**39-2903. Definitions. [Effective until July 1, 2013 — See Compiler's Notes.]** — As used in this chapter:

(1) "Full commissioning" means that a third-party commissioning authority has validated and documented that the building and its systems are designed, installed, tested and capable of being operated and maintained to perform in accordance with the design intent, including energy perfor-



mance. The full commissioning process extends through all phases of the project, from conceptualization to occupancy and operation, with evaluation checks at each phase to ensure validation of the building's performance.

(2) "Idaho state building authority" means the Idaho state building authority as established in chapter 64, title 67, Idaho Code.

(3) "Major facility project" means:

(a) A building project constructed by a state agency or for occupancy or use by a state agency that is larger than five thousand (5,000) gross square feet of occupied or conditioned space as defined in the appropriate building code adopted by the Idaho building code board pursuant to chapter 41, title 39, Idaho Code; or

(b) A building renovation project constructed by a state agency or for occupancy or use by a state agency on an existing building that is larger than five thousand (5,000) gross square feet of occupied or conditioned space as defined in the appropriate building code adopted by the Idaho building code board pursuant to chapter 41, title 39, Idaho Code, and with a project cost greater than fifty percent (50%) of the assessed value of the existing building.

(4) "Operational cost savings" means that the savings of the operational costs of a major facility project constructed pursuant to section 39-2904(1), Idaho Code, over a period of ten (10) years, will equal or be more than the additional cost of construction of the building as required in section 39-2904, Idaho Code.

(5) "Permanent building fund advisory council" means the permanent building fund advisory council created in section 67-5710, Idaho Code.

(6) "State agency" means every state officer, department, division, bureau, commission and board, including those in the legislative or judicial branch and public postsecondary educational institutions. With the exception of community college districts, for purposes of this chapter, "state agency" does not include a political subdivision as defined in section 67-2320(5), Idaho Code, or a public charter school as defined in section 33-5202A, Idaho Code.

#### **History.**

I.C., § 39-2903, as added by 2008, ch. 274, § 1, p. 781; am. 2009, ch. 11, § 13, p. 14.

### **STATUTORY NOTES**

#### **Prior Laws.**

Former § 39-2901 was repealed. See Prior Laws, § 39-2901.

#### **Amendments.**

The 2009 amendment, by ch. 11, updated the last section reference in subsection (4).

#### **Compiler's Notes.**

Section 2 of S.L. 2008, ch. 274 provided "The provisions of this act shall be null, void and of no force and effect on and after July 1, 2013."

**39-2904. Major facility projects. [Effective until July 1, 2013 — See Compiler's Notes.]** — (1) To the extent it is fiscally prudent and to the extent it is practical and feasible given the intended use of the building, all major facility projects receiving funding from the state general fund or the state permanent building fund or financed through the Idaho state building

authority shall be designed, constructed and certified to meet a target of at least ten percent (10%) to thirty percent (30%) better efficiency than a building of equal size, function and orientation built on the same site to the requirements of then current state building codes as provided in section 39-4109, Idaho Code. Full commissioning shall be considered on all major facility projects.

(2) The provisions of subsection (1) of this section shall apply to major facility projects that have not entered the schematic design phase prior to the effective date of this chapter.

(3) Beginning in 2009, on or before December 1 of each year, the division of public works, in cooperation with each appropriate state agency, shall submit a report to the permanent building fund advisory council, the legislature and the governor. The report shall describe the ongoing implementation of this chapter with achieved energy efficiency data and supporting narrative for each major facility project designed, constructed or certified as provided in subsection (1) of this section during the previous year.

(4) The governor shall designate a state office or agency to provide technical assistance to the state agencies and the permanent building fund advisory council on the implementation of this chapter.

#### History.

I.C., § 39-2904, as added by 2008, ch. 274,  
§ 1, p. 782.

### STATUTORY NOTES

#### Cross References.

Division of public works, § 67-5705.  
Permanent building fund, § 57-1101 et seq.  
State building authority, § 67-6401 et seq.

#### Compiler's Notes.

The phrase "the effective date of this chapter", in subsection (2), refers to the effective

date of S.L. 2008, ch. 274, which was July 1, 2008.

Section 2 of S.L. 2008, ch. 274 provided "The provisions of this act shall be null, void and of no force and effect on and after July 1, 2013."

## CHAPTER 30

## RADIATION AND NUCLEAR MATERIAL

#### SECTION.

39-3001 — 39-3019. [Repealed.]  
39-3020. Western Interstate Nuclear Compact.  
39-3021. Representative on western interstate nuclear board.  
39-3022. Alternate.  
39-3023. Copies of by-laws to be filed with state officers.  
39-3024. Persons dispatched to another state.  
39-3025. Northwest Interstate Compact on

#### SECTION.

Low-level Radioactive Waste Management.  
39-3026. Implementation of article III.  
39-3027. Law prohibiting use of nuclear energy for generation of electricity prohibited unless submitted to electorate.  
39-3028. Disposal of uranium mill tailings.  
39-3029. Pacific states agreement on radioactive materials transportation management.  
39-3030. [Amended and redesignated.]

**39-3001. Declaration of policy. [Repealed.]****STATUTORY NOTES****Prior Laws.**

Former § 39-3001, which comprised S.L. 1961, ch. 243, § 1, p. 406, was repealed by S.L. 1967, ch. 139, § 19.

**Compiler's Notes.**

This section, which comprised 1967, ch. 139, § 1, p. 307; am. 1972, ch. 280, § 1, p. 689, was repealed by S.L. 2007, ch. 83, § 4.

**39-3002. Purpose. [Repealed.]****STATUTORY NOTES****Prior Laws.**

Former § 39-3002, which comprised S.L. 1961, ch. 243, § 2, p. 406, was repealed by S.L. 1967, ch. 139, § 19.

**Compiler's Notes.**

This section, which comprised 1967, ch. 139, § 2, p. 307; am. 1972, ch. 280, § 2, p. 689, was repealed by S.L. 2007, ch. 83, § 4.

**39-3003. Definitions. [Repealed.]****STATUTORY NOTES****Prior Laws.**

Former § 39-3003, which comprised S.L. 1961, ch. 243, § 3, p. 406, was repealed by S.L. 1967, ch. 139, § 19.

139, § 3, p. 307; am. 1972, ch. 280, § 3, p. 689; am. 2001, ch. 103, § 19, p. 253, was repealed by S.L. 2007, ch. 83, § 4.

**Compiler's Notes.**

This section, which comprised 1967, ch.

**39-3004. State nuclear energy commission established. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1967, ch. 139, § 4, p. 307; am. 1969, ch. 14, § 1, p. 19;

am. 1974, ch. 22, § 44, p. 592; am. 1980, ch. 247, § 37, p. 582, was repealed by S.L. 2007, ch. 83, § 4.

**39-3005. State radiation control agency. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1967, ch. 139, § 5, p. 307; am. 1972, ch. 280, § 4, p. 689; am. 1974, ch. 23, § 144, p. 633; am. 1976,

ch. 9, § 4, p. 25; am. 1980, ch. 325, § 6, p. 820; am. 2001, ch. 103, § 20, p. 253, was repealed by S.L. 2007, ch. 83, § 4.

**39-3006. Rules — Licensing requirements and procedure — Registration of sources of radiation — Exemptions from registration or licensing. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1967, ch. 139, § 6, p. 307; am. 1972, ch. 280, § 5, p.

689; am. 1980, ch. 325, § 7, p. 820; am. 2001, ch. 103, § 21, p. 253, was repealed by S.L. 2007, ch. 83, § 4.



**39-3007. Inspection. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1967, ch.

139, § 7, p. 307; am. 2001, ch. 103, § 22, p. 253, was repealed by S.L. 2007, ch. 83, § 4.

**39-3008. Records. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1967, ch. 139, § 8, p. 307; am. 1972, ch. 280, § 6, p.

689; am. 2001, ch. 103, § 23, p. 253, was repealed by S.L. 2007, ch. 83, § 4.

**39-3009. Federal-state agreements — Authorized — Effect as to federal licenses. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1967, ch.

139, § 9, p. 307; am. 1972, ch. 280, § 7, p. 689, was repealed by S.L. 2007, ch. 83, § 4.

**39-3010. Inspection agreements and training programs. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1967, ch.

139, § 10, p. 307; am. 1972, ch. 280, § 8, p. 689, was repealed by S.L. 2007, ch. 83, § 4.

**39-3011. Administrative procedure. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1967, ch. 139, § 11, p. 307; am. 1972, ch. 280, § 9, p.

689; am. 2001, ch. 103, § 24, p. 253, was repealed by S.L. 2007, ch. 83, § 4.

**39-3012. Injunction proceedings. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1967, ch.

139, § 12, p. 307; am. 2001, ch. 103, § 25, p. 253, was repealed by S.L. 2007, ch. 83, § 4.

**39-3013. Prohibited uses. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1967, ch.

139, § 13, p. 307; am. 1972, ch. 280, § 10, p. 689, was repealed by S.L. 2007, ch. 83, § 4.

**39-3014. Impounding of materials. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1967, ch. 139, § 14, p. 307; am. 1972, ch. 280, § 11, p. 689, was repealed by S.L. 2007, ch. 83, § 4.

**39-3015. Prohibition — Fluoroscopic X-ray shoe fitting devices. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1967, ch. 139, § 15, p. 307, was repealed by S.L. 2001, ch. 110, § 1.

**39-3016. Exemptions. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1967, ch. 139, § 16, p. 307; am. 1972, ch. 280, § 12, p. 689, was repealed by S.L. 2007, ch. 83, § 4.

**39-3017. Penalties. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1967, ch. 139, § 17, p. 307; am. 2001, ch. 103, § 26, p. 253, was repealed by S.L. 2007, ch. 83, § 4.

**39-3018. Conduct of studies concerning nuclear energy development. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1967, ch. 139, § 18, p. 307; am. 1974, ch. 23, § 145, p. 633; am. 2001, ch. 103, § 27, p. 253, was repealed by S.L. 2007, ch. 83, § 4. This section was also amended by S.L. 2007, ch. 360, § 13, but the amendment could not be given effect because of the repeal by S.L. 2007, ch. 83, § 4.

**39-3019. Existing rules remain in effect. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1967, ch. 139, § 20, p. 307; am. 1974, ch. 23, § 146, p. 633; am. 2001, ch. 103, § 28, p. 253, was repealed by S.L. 2007, ch. 83, § 4.

**39-3020. Western Interstate Nuclear Compact. —** The Western Interstate Nuclear Compact is hereby enacted into law and entered into by the state of Idaho as a party, and is in full force and effect between the state and any other state joining therein in accordance with the terms of the compact, which compact is substantially as follows:

## ARTICLE I. POLICY AND PURPOSE

The party states recognize that the proper employment of scientific and technological discoveries and advances in nuclear and related fields and direct and collateral application and adaptation of processes and techniques developed in connection therewith, properly correlated with the other resources of the region, can assist substantially in the industrial progress of the West and the further development of the economy of the region. They also recognize that optimum benefit from nuclear and related scientific or technological resources, facilities and skills requires systematic encouragement, guidance, assistance, and promotion from the party states on a cooperative basis. It is the policy of the party states to undertake such cooperation on a continuing basis. It is the purpose of this compact to provide the instruments and framework for such a cooperative effort in nuclear and related fields, to enhance the economy of the West and contribute to the individual and community well-being of the region's people.

## ARTICLE II. THE BOARD

(a) There is hereby created an agency of the party states to be known as the "Western Interstate Nuclear Board" (hereinafter called the Board). The Board shall be composed of one member from each party state designated or appointed in accordance with the law of the state which he represents and serving and subject to removal in accordance with such law. Any member of the Board may provide for the discharge of his duties and the performance of his functions thereon (either for the duration of his membership or for any lesser period of time) by a deputy or assistant, if the laws of his state make specific provisions therefor. The federal government may be represented without vote if provision is made by federal law for such representation.

(b) The Board members of the party states shall each be entitled to one vote on the Board. No action of the Board shall be binding unless taken at a meeting at which a majority of all members representing the party states are present and unless a majority of the total number of votes on the Board are cast in favor thereof.

(c) The Board shall have a seal.

(d) The Board shall elect annually, from among its members, a chairman, a vice chairman, and a treasurer. The Board shall appoint and fix the compensation of an Executive Director who shall serve at its pleasure and who shall also act as Secretary, and who, together with the Treasurer, and such other personnel as the Board may direct, shall be bonded in such amounts as the Board may require.

(e) The Executive Director, with the approval of the Board, shall appoint and remove or discharge such personnel as may be necessary for the performance of the Board's functions irrespective of the civil service, personnel or other merit system laws of any of the party states.

(f) The Board may establish and maintain, independently or in conjunction with any one or more of the party states, or its institutions or subdivisions, a suitable retirement system for its full-time employees. Employees of the Board shall be eligible for social security coverage in



respect of old age and survivors insurance provided that the Board takes such steps as may be necessary pursuant to federal law to participate in such program of insurance as a governmental agency or unit. The Board may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(g) The Board may borrow, accept, or contract for the services of personnel from any state or the United States or any subdivision or agency thereof, from any interstate agency, or from any institution, person, firm or corporation.

(h) The Board may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services (conditional or otherwise) from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm, or corporation, and may receive, utilize, and dispose of the same. The nature, amount and conditions, if any, attendant upon any donation or grant accepted pursuant to this paragraph or upon any borrowing pursuant to paragraph (g) of this Article, together with the identity of the donor, grantor or lender, shall be detailed in the annual report of the Board.

(i) The Board may establish and maintain such facilities as may be necessary for the transacting of its business. The Board may acquire, hold, and convey real and personal property and any interest therein.

(j) The Board shall adopt bylaws, rules, and regulations for the conduct of its business, and shall have the power to amend and rescind these bylaws, rules, and regulations. The Board shall publish its bylaws, rules, and regulations in convenient form and shall file a copy thereof, and shall also file a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

(k) The Board annually shall make to the governor of each party state, a report covering the activities of the Board for the preceding year, and embodying such recommendations as may have been adopted by the Board, which report shall be transmitted to the legislature of said state. The Board may issue such additional reports as it may deem desirable.

### ARTICLE III. FINANCES

(a) The Board shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that jurisdiction for presentation to the legislature thereof.

(b) Each of the Board's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. Each of the Board's requests for appropriations pursuant to a budget of estimated expenditures shall be apportioned equally among the party states. Subject to appropriation by their respective legislatures, the Board shall be provided with such funds by each of the party states as are necessary to provide the means of establishing and maintaining facilities, a staff of personnel, and such activities as may be necessary to fulfill the powers and duties imposed upon and entrusted to the Board.

(c) The Board may meet any of its obligations in whole or in part with funds available to it under Article II(h) of this compact, provided that the Board takes specific action setting aside such funds prior to the incurring of any obligation to be met in whole or in part in this manner. Except where the Board makes use of funds available to it under Article II(h) hereof, the Board shall not incur any obligation prior to the allotment of funds by the party jurisdictions adequate to meet the same.

(d) Any expenses and any other costs for each member of the Board in attending Board meetings shall be met by the Board.

(e) The Board shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Board shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Board shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become a part of the annual report of the Board.

(f) The Accounts of the Board shall be open at any reasonable time for inspection to persons authorized by the Board, and duly designated representatives of governments contributing to the Board's support.

#### ARTICLE IV. ADVISORY COMMITTEES

The Board may establish such advisory and technical committees as it may deem necessary, membership on which may include but not be limited to private citizens, expert and lay personnel, representatives of industry, labor, commerce, agriculture, civic associations, medicine, education, voluntary health agencies, and officials of local, State and Federal Government, and may cooperate with and use the services of any such committees and the organizations which they represent in furthering any of its activities under this compact.

#### ARTICLE V. POWERS

The Board shall have power to —

(a) Encourage and promote cooperation among the party states in the development and utilization of nuclear and related technologies and their application to industry and other fields.

(b) Ascertain and analyze on a continuing basis the position of the West with respect to the employment in industry of nuclear and related scientific findings and technologies.

(c) Encourage the development and use of scientific advances and discoveries in nuclear facilities, energy, materials, products, by-products, and all other appropriate adaptations of scientific and technological advances and discoveries.

(d) Collect, correlate, and disseminate information relating to the peaceful uses of nuclear energy, materials, and products, and other products and processes resulting from the application of related science and technology.

(e) Encourage the development and use of nuclear energy, facilities, installations, and products as part of a balanced economy.

(f) Conduct, or cooperate in conducting, programs of training for state and local personnel engaged in any aspects of:



1. Nuclear industry, medicine, or education, or the promotion or regulation thereof.
2. Applying nuclear scientific advances or discoveries, and any industrial commercial or other processes resulting therefrom.
3. The formulation or administration of measures designed to promote safety in any matter related to the development, use or disposal of nuclear energy, materials, products, by-products, installations, or wastes, or to safety in the production, use and disposal of any other substances peculiarly related thereto.

(g) Organize and conduct, or assist and cooperate in organizing and conducting, demonstrations or research in any of the scientific, technological or industrial fields to which this compact relates.

(h) Undertake such nonregulatory functions with respect to non-nuclear sources of radiation as may promote the economic development and general welfare of the West.

(i) Study industrial, health, safety, and other standards, laws, codes, rules, regulations, and administrative practices in or related to nuclear fields.

(j) Recommend such changes in, or amendments or additions to the laws, codes, rules, regulations, administrative procedures and practices or local laws or ordinances of the party states of their subdivisions in nuclear and related fields, as in its judgment may be appropriate. Any such recommendations shall be made through the appropriate state agency, with due consideration of the desirability of uniformity but shall also give appropriate weight to any special circumstances which may justify variations to meet local conditions.

(k) Consider and make recommendations designed to facilitate the transportation of nuclear equipment, materials, products, by-products, wastes, and any other nuclear or related substances, in such manner and under such conditions as will make their availability or disposal practicable on an economic and efficient basis.

(l) Consider and make recommendations with respect to the assumption of and protection against liability actually or potentially incurred in any phase of operations in nuclear and related fields.

(m) Advise and consult with the federal government concerning the common position of the party states or assist party states with regard to individual problems where appropriate in respect to nuclear and related fields.

(n) Cooperate with the Atomic Energy Commission, the National Aeronautics and Space Administration, the Office of Science and Technology, or any agencies successor thereto, any other officer or agency of the United States, and any other governmental unit or agency or officer thereof, and with any private persons or agencies in any of the fields of its interest.

(o) Act as licensee, contractor or sub-contractor of the United States Government or any party state with respect to the conduct of any research activity requiring such license or contract and operate such research facility or undertake any program pursuant thereto, provided that this power shall be exercised only in connection with the implementation of one or more other powers conferred upon the Board by this compact.



(p) Prepare, publish and distribute (with or without charge) such reports, bulletins, newsletters or other materials as it deems appropriate.

(q) Ascertain from time to time such methods, practices, circumstances, and conditions as may bring about the prevention and control of nuclear incidents in the area comprising the party states, to coordinate the nuclear incident prevention and control plans and the work relating thereto of the appropriate agencies of the party states and to facilitate the rendering of aid by the party states to each other in coping with nuclear incidents.

The Board may formulate and, in accordance with need from time to time, revise a regional plan or regional plans for coping with nuclear incidents within the territory of the party states as a whole or within any subregion or subregions of the geographic area covered by this compact.

Any nuclear incident plan in force pursuant to this paragraph shall designate the official or agency in each party state covered by the plan who shall coordinate requests for aid pursuant to Article VI of this compact and the furnishing of aid in response thereto.

Unless the party states concerned expressly otherwise agree, the Board shall not administer the summoning and dispatching of aid, but this function shall be undertaken directly by the designated agencies and officers of the party states.

However, the plan or plans of the Board in force pursuant to this paragraph shall provide for reports to the Board concerning the occurrence of nuclear incidents and the requests for aid on account thereof, together with summaries of the actual working and effectiveness of mutual aid in particular instances.

From time to time, the Board shall analyze the information gathered from reports of aid pursuant to Article VI and such other instances of mutual aid as may have come to its attention, so that experience in the rendering of such aid may be available.

(r) Prepare, maintain, and implement a regional plan or regional plans for carrying out the duties, powers, or functions conferred upon the Board by this compact.

(s) Undertake responsibilities imposed or necessarily involved with regional participation pursuant to such cooperative programs of the federal government as are useful in connection with the fields covered by this compact.

## ARTICLE VI. MUTUAL AID

(a) Whenever a party state, or any state or local governmental authorities therein, request aid from any other party state pursuant to this compact in coping with a nuclear incident, it shall be the duty of the requested state to render all possible aid to the requesting state which is consonant with the maintenance of protection of its own people.

(b) Whenever the officers or employees of any party state are rendering outside aid pursuant to the request of another party state under this compact, the officers or employees of such state shall, under the direction of the authorities of the state to which they are rendering aid, have the same powers, duties, rights, privileges and immunities as comparable officers and employees of the state to which they are rendering aid.

(c) No party state or its officers or employees rendering outside aid pursuant to this compact shall be liable on account of any act or omission on their part while so engaged, or on account of the maintenance or use of any equipment or supplies in connection therewith.

(d) All liability that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

(e) Any party state rendering outside aid pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of all materials, transportation, wages, salaries and maintenance of officers, employees and equipment incurred in connection with such requests: provided that nothing herein contained shall prevent any assisting party state from assuming such loss, damage, expense or other cost or from loaning such equipment or from donating such services to the receiving party state without charge or cost.

(f) Each party state shall provide for the payment of compensation and death benefits to injured officers and employees and the representatives of deceased officers and employees in case officers or employees sustain injuries or death while rendering outside aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within the state by or in which the officer or employee was regularly employed.

## ARTICLE VII. SUPPLEMENTARY AGREEMENTS

(a) To the extent that the Board has not undertaken an activity or project which would be within its power under the provisions of Article V of this compact, any two or more of the party states (acting by their duly constituted administrative officials) may enter into supplementary agreements for the undertaking and continuance of such an activity or project. Any such agreement shall specify the purpose or purposes; its duration and the procedure for termination thereof or withdrawal therefrom; the method of financing and allocating the costs of the activity or project; and such other matters as may be necessary or appropriate.

No such supplementary agreement entered into pursuant to this article shall become effective prior to its submission to and approval by the Board. The Board shall give such approval unless it finds that the supplementary agreement or activity or project contemplated thereby is inconsistent with the provisions of this compact or a program or activity conducted by or participated in by the Board.

(b) Unless all of the party states participate in a supplementary agreement, any cost or costs thereof shall be borne separately by the states party thereto. However, the Board may administer or otherwise assist in the operation of any supplementary agreement.

(c) No party to a supplementary agreement entered into pursuant to this article shall be relieved thereby of any obligation or duty assumed by said party state under or pursuant to this compact, except that timely and proper



performance of such obligation or duty by means of the supplementary agreement may be offered as performance pursuant to the compact.

(d) The provisions to this Article shall apply to supplementary agreements and activities thereunder, but shall not be construed to repeal or impair any authority which officers or agencies of party states may have pursuant to other laws to undertake cooperative arrangements or projects.

#### ARTICLE VIII. OTHER LAWS AND REGULATIONS

Nothing in this compact shall be construed to —

(a) Permit or require any person or other entity to avoid or refuse compliance with any law, rule, regulation, order or ordinance of a party state or subdivision thereof now or hereafter made, enacted or in force.

(b) Limit, diminish, or otherwise impair jurisdiction exercised by the Atomic Energy Commission, any agency successor thereto, or any other federal department, agency or officer pursuant to and in conformity with any valid and operative act of Congress; nor limit, diminish, affect, or otherwise impair jurisdiction exercised by any officer or agency of a party state, except to the extent that the provisions of this compact may provide therefor.

(c) Alter the relations between and the respective internal responsibilities of the government of a party state and its subdivisions.

(d) Permit or authorize the Board to own or operate any facility, reactor, or installation for industrial or commercial purposes.

#### ARTICLE IX. ELIGIBLE PARTIES, ENTRY INTO FORCE AND WITHDRAWAL

(a) Any or all of the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming shall be eligible to become party to this compact.

(b) As to any eligible party state, this compact shall become effective when its legislature shall have enacted the same into law: provided, that it shall not become initially effective until enacted into law by five states.

(c) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until two years after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

(d) Guam and American Samoa, or either of them may participate in the compact to such extent as may be mutually agreed by the Board and the duly constituted authorities of Guam or American Samoa, as the case may be. However, such participation shall not include the furnishing or receipt of mutual aid pursuant to Article VI, unless that Article has been enacted or otherwise adopted so as to have the full force and effect of law in the jurisdiction affected. Neither Guam nor American Samoa shall be entitled to voting participation on the Board, unless it has become a full party to the compact.

#### ARTICLE X. SEVERABILITY AND CONSTRUCTION

The provisions of this compact and of any supplementary agreement entered into hereunder shall be severable and if any phrase, clause,



sentence or provision of this compact or such supplementary agreement is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact or such supplementary agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact or any supplementary agreement entered into hereunder shall be held contrary to the constitution of any state participating therein, the compact or such supplementary agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. The provisions of this compact and of any supplementary agreement entered into pursuant thereto shall be liberally construed to effectuate the purposes thereof.

**History.**

1969, ch. 34, § 1, p. 61.

**STATUTORY NOTES****Compiler's Notes.**

The words in parentheses so appeared in the law as enacted.

**39-3021. Representative on western interstate nuclear board. —** The member of the western interstate nuclear board representing the state of Idaho shall be appointed by the governor and serve at his pleasure.

**History.**

1969, ch. 34, § 2, p. 61.

**39-3022. Alternate. —** The alternate required pursuant to article II(a) of the compact shall be designated by the western interstate nuclear board member representing the state of Idaho, and shall serve at his pleasure in an order specified by him.

**History.**

1969, ch. 34, § 3, p. 61.

**STATUTORY NOTES****Compiler's Notes.**

For provisions of compact, see § 39-3020.

**39-3023. Copies of by-laws to be filed with state officers. —** Pursuant to article II(j) of the compact, the western interstate nuclear board shall file copies of its by-laws and any amendments thereto with the secretary of state and the executive director of the office of nuclear energy development.

**History.**

1969, ch. 34, § 4, p. 61.

## STATUTORY NOTES

**Compiler's Notes.**

For provisions of compact, see § 39-3020.

**39-3024. Persons dispatched to another state.** — The laws of the state of Idaho and any benefits payable thereunder shall apply and be payable to any persons dispatched to another state pursuant to article VI of the compact. If the aiding personnel are officers or employees of the state of Idaho or any subdivisions thereof, they shall be entitled to the same workmen's compensation or other benefits in case of injury or death to which they would have been entitled if injured or killed while engaged in coping with a nuclear incident in their jurisdictions of regular employment.

**History.**

1969, ch. 34, § 5, p. 61.

## STATUTORY NOTES

**Compiler's Notes.**

For provisions of compact, see § 39-3020.

act should take effect from and after July 1, 1969.

**Effective Dates.**

Section 6 of S.L. 1969, ch. 34 provided the

**39-3025. Northwest Interstate Compact on Low-level Radioactive Waste Management.** — The Northwest Interstate Compact on Low-level Radioactive Waste Management is hereby enacted into law and entered into by the state of Idaho as a party, and is in full force and effect between the state and any other state joining therein in accordance with the terms of the compact, which compact is substantially as follows:

**NORTHWEST INTERSTATE COMPACT ON LOW-LEVEL  
RADIOACTIVE WASTE MANAGEMENT**

**ARTICLE I — Policy and Purpose**

The party states recognize that low-level radioactive wastes are generated by essential activities and services that benefit the citizens of the states. It is further recognized that the protection of the health and safety of the citizens of the party states and the most economical management of low-level radioactive wastes can be accomplished through cooperation of the states in minimizing the amount of handling and transportation required to dispose of such wastes and through the cooperation of the states in providing facilities that serve the region. It is the policy of the party states to undertake the necessary cooperation to protect the health and safety of the citizens of the party states and to provide for the most economical management of low-level radioactive wastes on a continuing basis. It is the purpose of this compact to provide the means for such a cooperative effort among the party states so that the protection of the citizens of the states and the maintenance of the viability of the states' economies will be enhanced while sharing the responsibilities of radioactive low-level waste management.

## ARTICLE II — Definitions

As used in this compact:

(1) "Facility" means any site, location, structure, or property used or to be used for the storage, treatment, or disposal of low-level waste, excluding federal waste facilities;

(2) "Low-level waste" means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities which exceed applicable federal or state standards for unrestricted release. Low-level waste does not include waste containing more than ten (10) nanocuries of transuranic contaminants per gram of material, nor spent reactor fuel, nor material classified as either high-level waste or waste which is unsuited for disposal by near-surface burial under any applicable federal regulations;

(3) "Generator" means any person, partnership, association, corporation, or any other entity whatsoever which, as a part of its activities, produces low-level radioactive waste;

(4) "Host state" means a state in which a facility is located.

## ARTICLE III — Regulatory Practices

Each party state hereby agrees to adopt practices which will require low-level waste shipments originating within its borders and destined for a facility within another party state to conform to the applicable packaging and transportation requirements and regulations of the host state. Such practices shall include:

(1) Maintaining an inventory of all generators within the state that have shipped or expect to ship low-level waste to facilities in another party state;

(2) Periodic unannounced inspection of the premises of such generators and the waste management activities thereon;

(3) Authorization of the containers in which such waste may be shipped, and a requirement that generators use only that type of container authorized by the state;

(4) Assurance that inspections of the carriers which transport such waste are conducted by proper authorities, and appropriate enforcement action taken for violations;

(5) After receiving notification from a host state that a generator within the party state is in violation of applicable packaging or transportation standards, the party state will take appropriate action to assure that such violations do not recur. Such action may include inspection of every individual low-level waste shipment by that generator.

Each party state may impose fees upon generators and shippers to recover the cost of the inspections and other practices under this article. Nothing in this article shall be construed to limit any party state's authority to impose additional or more stringent standards on generators or carriers than those required under this article.

## ARTICLE IV — Regional Facilities

(1) Facilities located in any party state, other than facilities established or maintained by individual low-level waste generators for the management



of their own low-level waste, shall accept low-level waste generated in any party state if such waste has been packaged and transported according to applicable laws and regulations.

(2) No facility located in any party state may accept low-level waste generated outside of the region comprised of the party states, except as provided in article V.

(3) Until such time as paragraph (2) of article IV takes effect, facilities located in any party state may accept low-level waste generated outside of any of the party states only if such waste is accompanied by a certificate of compliance issued by an official of the state in which such waste shipment originated. Such certificate shall be in such form as may be required by the host state, and shall contain at least the following:

(A) The generator's name and address;

(B) A description of the contents of the low-level waste container;

(C) A statement that the low-level waste being shipped has been inspected by the official who issued the certificate or by his agent or by a representative of the United States nuclear regulatory commission, and found to have been packaged in compliance with applicable federal regulations and such additional requirements as may be imposed by the host state;

(D) A binding agreement by the state of origin to reimburse any party state for any liability or expense incurred as a result of an accidental release of such waste during shipment or after such waste reaches the facility.

(4) Each party state shall cooperate with the other party states in determining the appropriate site of any facility that might be required within the region comprised of the party states, in order to maximize public health and safety while minimizing the use of any one (1) party state as the host of such facilities on a permanent basis. Each party state further agrees that decisions regarding low-level waste management facilities in their region will be reached through a good faith process which takes into account the burdens borne by each of the party states as well as the benefits each has received.

(5) The party states recognize that the issue of hazardous chemical waste management is similar in many respects to that of low-level waste management. Therefore, in consideration of the state of Washington allowing access to its low-level waste disposal facility by generators in other party states, party states such as Oregon and Idaho which host hazardous chemical waste disposal facilities will allow access to such facilities by generators within other party states. Nothing in this compact shall be construed to prevent any party state from limiting the nature and type of hazardous chemical or low-level wastes to be accepted at facilities within its borders or from ordering the closure of such facilities, so long as such action by a host state is applied equally to all generators within the region comprised of the party states.

(6) Any host state may establish a schedule of fees and requirements related to its facility, to assure that closure, perpetual care, and maintenance and contingency requirements are met, including adequate bonding.

#### ARTICLE V — Northwest Low-Level Waste Compact Committee

The governor of each party state shall designate one (1) official of that state as the person responsible for administration of this compact. The

officials so designated shall together comprise the northwest low-level waste compact committee. The committee shall meet as required to consider matters arising under this compact. The parties shall inform the committee of existing regulations concerning low-level waste management in their states, and shall afford all parties a reasonable opportunity to review and comment upon any proposed modifications in such regulations. Notwithstanding any provision of article IV to the contrary, the committee may enter into arrangements with states, provinces, individual generators, or regional compact entities outside the region comprised of the party states for access to facilities on such terms and conditions as the committee may deem appropriate. However, it shall require a two-thirds (2/3) vote of all such members, including the affirmative vote of the member of any party state in which a facility affected by such arrangement is located, for the committee to enter into such arrangement.

#### ARTICLE VI — Eligible Parties and Effective Date

(1) Each of the following states is eligible to become a party to this compact: Alaska, Hawaii, Idaho, Montana, Oregon, Utah, Washington, and Wyoming. As to any eligible party, this compact shall become effective upon enactment into law by that party, but it shall not become initially effective until enacted into law by two (2) states. Any party state may withdraw from this compact by enacting a statute repealing its approval.

(2) After the compact has initially taken effect pursuant to paragraph (1) of this article, any eligible party state may become a party to this compact by the execution of an executive order by the governor of the state. Any state which becomes a party in this manner shall cease to be a party upon the final adjournment of the next general or regular session of its legislature or July 1, 1983, whichever occurs first, unless the compact has by then been enacted as a statute by that state.

(3) Paragraph (2) of article IV of this compact shall take effect on July 1, 1983, if consent is given by congress. As provided in public law 96-573, congress may withdraw its consent to the compact after every five (5) year period.

#### ARTICLE VII — Severability

If any provision of this compact, or its application to any person or circumstance, is held to be invalid, all other provisions of this compact, and the application of all of its provisions to all other persons and circumstances, shall remain valid; and to this end the provisions of this compact are severable.

#### History.

I.C., § 39-3025, as added by 1981, ch. 345,  
§ 1, p. 714.

## STATUTORY NOTES

**Federal References.**

Public Law 96-573, referred to in Article VI of this section, is codified as 42 USCS §§ 2021b to 2021j.

ated in 1981 by the states of Alaska, Hawaii, Idaho, Montana, Oregon, Utah, and Washington. Wyoming joined in 1992. See <http://www.ecy.wa.gov/nwic/index.asp>.

**Compiler's Notes.**

The northeast interstate compact was cre-

**39-3026. Implementation of article III.** — The state department of environmental quality shall adopt the practices and may impose the fees authorized under article III of the compact, except that the Idaho state police and the public utilities commission shall retain their existing enforcement and inspection authority relating to carriers. The board of environmental quality shall adopt such rules as may be necessary to enable the department of environmental quality to carry out the provisions of this section.

**History.**

I.C., § 39-3026, as added by 1981, ch. 345, § 2, p. 714; am. 2000, ch. 469, § 95, p. 1450;

am. 2001, ch. 103, § 29, p. 253; am. 2007, ch. 83, § 5, p. 221.

## STATUTORY NOTES

**Cross References.**

Board of environmental quality, § 39-107.  
Department of environmental quality, § 39-104.

the designated state radiation control agency" following "The state department of environmental quality."

Idaho state police, § 67-2901 et seq.

Public utilities commission, § 61-201 et seq.

**Effective Dates.**

Section 3 of S.L. 1981, ch. 345 declared an emergency. Approved April 7, 1981.

**Amendments.**

The 2007 amendment, by ch. 83, deleted "as

**39-3027. Law prohibiting use of nuclear energy for generation of electricity prohibited unless submitted to electorate.** — No law shall be enacted by the State of Idaho to prohibit the use of nuclear energy for the generation of electricity, unless the proposed measure shall have first been submitted to the electorate at the next earliest general election. The results of such submission of the question to the electorate shall be advisory in nature, and shall not prevent the legislature from acting in any manner on the measure.

**History.**

Init. Measure 1982, No. 3, § 1.

## STATUTORY NOTES

**Effective Dates.**

Section 2 of Init. Measure 1982, No. 3 read: "An emergency existing therefor, which emergency is hereby declared to exist, this act

shall be in full force on and after its approval by the people of the State of Idaho." Approved November 2, 1982.

**39-3028. Disposal of uranium mill tailings.** — (1) Legislative decla-



ration. The legislature hereby finds and declares that the existence of uranium mill tailings at active and inactive mill operations could pose a potential radiation health hazard. This section is enacted to protect the public health, safety, and welfare by authorizing the department of environmental quality to cooperate with the federal government in providing for the stabilization, disposal, and control of such tailings in a safe and environmentally sound manner.

(2) Terms defined. For the purposes of this section, the terms "processing site" and "residual radioactive material" shall have the meanings specified in section 101(6) and (7), respectively, of public law 95-604, 42 U.S.C., section 7901, et seq., as from time to time amended.

(3) Authorization to participate. The department of environmental quality is hereby authorized to participate in federal implementation of the "Uranium Mill Tailings Radiation Control Act of 1978" (P.L. 95-604), and for such purpose the agency may:

- (a) Enter into cooperative agreements with the secretary of energy to perform remedial actions at processing sites designated by the secretary;
  - (b) Obtain written consent from the record owner of a designated processing site to perform remedial actions at such site;
  - (c) Provide for reimbursement for the actual cost of any remedial action in accordance with the terms of public law 95-604;
  - (d) Acquire and dispose of any designated processing site, including any interest in such site, and any site to be used for the permanent disposition and stabilization of residual radioactive materials;
  - (e) Participate in the selection and performance of remedial actions.
- (4) Financial participation.

(a) The legislature accepts in principle the provisions of section 107(a) of public law 95-604 which requires the state to pay ten percent (10%) of the actual cost of any remedial action and administrative costs from nonfederal moneys, reserving, however, the right and authority to limit through yearly appropriations the amount of state moneys committed to such costs.

(b) The state of Idaho may receive all or a share of the net profits derived from the recovery of minerals from residual radioactive materials at any designated processing site within the state in accordance with the provisions of section 108(b) of public law 95-604.

#### **History.**

I.C., § 39-3028, as added by 1984, ch. 257,  
§ 1, p. 617; am. 2007, ch. 83, § 6, p. 221.

#### **STATUTORY NOTES**

##### **Cross References.**

Department of environmental quality,  
§ 39-104.

##### **Amendments.**

The 2007 amendment, by ch. 83, in subsection (1) and the introductory language of subsection (3), substituted "department of environmental quality" for "state radiation control agency."

##### **Federal References.**

Section 101 of public law 95-604, referred to in subsection (2), is codified as 42 USCS § 7911.

The Uranium Mill Tailings Radiation Control Act of 1978 (P.L. 95-604), referred to in subsection (3), is compiled as 42 USCS §§ 2014, 2021, 2022, 2111, 2113, 2114, 2201, 7901, 7911-7925, 7941, 7942.

Section 107 of public law 95-604, referred to in paragraph (4)(a), is codified as 42 USCS § 7917.

Section 108 of public law 95-604, referred to in paragraph (4)(b), is codified as 42 USCS § 7918.

**39-3029. Pacific states agreement on radioactive materials transportation management.** — The pacific states agreement on radioactive materials transportation management is hereby enacted into law and entered into by the state of Idaho as a party, and is in full force and effect between the state and other states joining the agreement in accordance with its terms.

## PACIFIC STATES AGREEMENT ON RADIOACTIVE MATERIALS TRANSPORTATION MANAGEMENT

### ARTICLE I—Policy and Purpose

The party states recognize that protection of the health and safety of citizens and the environment, and the most economical transportation of radioactive materials, can be accomplished through cooperation and coordination among neighboring states. It is the purpose of this agreement to establish a committee comprised of representatives from each party state to further cooperation between the states on emergency response and to coordinate activities by the states to eliminate unnecessary duplication of rules and regulations regarding the transportation and handling of radioactive material.

The party states intend that this agreement facilitate both interstate commerce and protection of public health and the environment. To accomplish this goal, the party states direct the committee to develop model regulatory standards for party states to act upon and direct the committee to coordinate decisions by party states relating to the routing and inspection of shipments of radioactive material.

### ARTICLE II—Definitions

As used in this agreement:

- (1) "Carrier" includes common, private, and contract carriers.
- (2) "Hazardous material" means a substance or material which has been determined by the United States department of transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated.
- (3) "Radioactive material" has the meaning given that term in federal department of transportation regulations found in 49 C.F.R. part 173, and includes, but is not limited to, high-level radioactive waste, low-level radioactive waste, and spent nuclear fuel, as defined in section 2 of the nuclear waste policy act of 1982 (96 stat. 2202; 42 U.S.C.A. § 10101).
- (4) "Transportation" means the transport by any means of radioactive material destined for or derived from any location, and any loading, unloading, or storage incident to such transport. "Transportation" does not include permanent storage or disposal of the material.

### ARTICLE III—Regulatory Practices

Section 1. The party states agree to develop model standards not in



conflict with federal law or regulations, for carriers of radioactive material to provide information regarding:

- (1) The amount and kind of material transported;
- (2) The mode of transportation and, to the extent feasible, the route or routes and the time schedule;
- (3) The carrier's compliance with local, state, and federal rules and regulations related to radioactive material transportation;
- (4) The carrier's compliance with federal and state liability insurance requirements.

Section 2. Consistent with federal law or regulations pertaining to transportation of radioactive material, the party states also agree to:

- (1) Develop model uniform procedures for issuing permits to carriers;
- (2) Develop model uniform record-keeping processes that allow access on demand by each state;
- (3) Develop model uniform safety standards for carriers;
- (4) Coordinate routing of shipments of radioactive materials;
- (5) Develop a method for coordinating the party states' emergency response plans to provide for regional emergency response including
  - (a) systems for sharing information essential to radiation control efforts,
  - (b) systems for sharing emergency response personnel, and
  - (c) a method to allocate costs and clarify liability when a party state or its officers request or render emergency response;
- (6) Recommend parking requirements for motor vehicles transporting radioactive materials;
- (7) Coordinate state inspections of carriers; and
- (8) Develop other cooperative arrangements and agreements to enhance safety.

Section 3. The party states also agree to coordinate emergency response training and preparedness drills among the party states, Indian tribes, and affected political subdivisions of the party states, and if possible, with federal agencies.

Section 4. The party states recognize that the transportation management of hazardous waste and hazardous materials is similar in many respects to that of radioactive materials. The party states, therefore, agree to confer as to transportation management and emergency response for those items where similarities in management exist.

#### ARTICLE IV—Pacific States Radioactive Materials Transportation Committee

Section 1. Each party state shall designate one official of that state to confer with appropriate legislative committees and with other officials of that state responsible for managing transportation of radioactive material, and with affected Indian tribes and be responsible for administration of this agreement. In Idaho the commission member shall be a legislator appointed by the legislative council to serve during a full legislative term. The officials so designated shall together comprise the Pacific states radioactive materials transportation committee. The committee shall meet as required to consider and, where necessary, coordinate matters addressed in this agree-



ment. The parties shall inform the committee of existing regulations concerning radioactive materials transportation management in their states, and shall afford all parties a reasonable opportunity to review and comment upon any proposed modifications in such regulations.

Section 2. The committee may also engage in long-term planning to assure safe and economical management of radioactive material transportation on a continuing basis.

Section 3. To the extent practicable, the committee shall coordinate its activities with those of other organizations.

#### ARTICLE V—Eligible Parties and Effective Date

Section 1. The states of Arizona, California, Colorado, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington and Wyoming are eligible to become a party to this agreement. As to any eligible party, this agreement shall become effective upon enactment into law by that party, but it shall not become initially effective until enacted into law by two states. Any party state may withdraw from this agreement by enacting a statute repealing its approval.

Section 2. After the agreement has initially taken effect under section 1 of this article, any eligible party state may become a party to this agreement by the execution of an executive order by the governor of the state. Any state which becomes a party in this manner shall cease to be a party upon the final adjournment of the next general or regular session of its legislature or July 1, 1988, whichever occurs first, unless the agreement has by then been enacted as a statute by that state.

#### ARTICLE VI—Severability

If any provision of this agreement, or its application to any person or circumstance, is held to be invalid, all other provisions of this agreement, and the application of all of its provisions to all other persons and circumstances, shall remain valid; and to this end the provisions of this agreement are severable.

#### History.

I.C., § 39-3029, as added by 1987, ch. 57,  
§ 1, p. 101.

#### STATUTORY NOTES

##### Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

##### Effective Dates.

Section 2 of S.L. 1987, ch. 57 declared an emergency. Approved March 18, 1987.

**39-3030. [Amended and redesignated.]**

#### STATUTORY NOTES

##### Compiler's Notes.

Former § 39-3030 was amended and redesignated as § 56-1044 pursuant to S.L. 2001, ch. 110, § 36.

## CHAPTER 31

### REGIONAL MENTAL HEALTH SERVICES

## SECTION.

- 39-3101 — 39-3122. [Repealed.]  
 39-3123. Declaration of policy.  
 39-3124. Designation of state mental health authority.  
 39-3125. State planning council on mental health.  
 39-3126. Designation of regions for comprehensive mental health services.  
 39-3127. Reciprocal agreements between states to share services.  
 39-3128. Services to be offered.  
 39-3129. Petition for regional services.  
 39-3130. Regional mental health board — Members.  
 39-3131. Term — Vacancies — Compensation.

## SECTION.

- 39-3132. Powers and duties.  
 39-3133. Director of the department of health and welfare — Duties.  
 39-3134. Coordination of services between regions and state.  
 39-3134A. Cooperative service plan component.  
 39-3135. Facilities for mental health services.  
 39-3136. Funds.  
 39-3137. Services to be nondiscriminatory — Fees.  
 39-3138. Existing state-county contracts for services.  
 39-3139. Title of act.

#### 39-3101 — 39-3122. Establishment and operation of community mental health centers. [Repealed.]

#### STATUTORY NOTES

**Compiler's Notes.**

These sections, which comprised S.L. 1965, ch. 183, §§ 1 to 24, were repealed by S.L.

1969, ch. 202, § 19. For present comparable provisions, see § 39-2123 et seq.

**39-3123. Declaration of policy.** — It has been the policy of this state to provide treatment services for her citizens afflicted by mental illnesses. These illnesses cause both intense human suffering to children and adults and severe social and economic loss to the state. Regional mental health services, providing early and appropriate treatment, have proven to be valuable in the prevention of long-term, incapacitating mental illnesses and commitment of the patient to a state mental hospital. Acknowledging that it is the policy of the state to provide mental hospital services to all citizens in need of such care, it is the purpose of this act to delegate to the state mental health authority the responsibility and authority to establish and maintain regional comprehensive mental health services in order to extend appropriate mental health services to her citizens within all regions of the state.

**History.**

1969, ch. 202, § 1, p. 589.

#### STATUTORY NOTES

**Compiler's Notes.**

The words "this act" refer to S.L. 1969, ch. 202 which is compiled as §§ 39-3123, 39-

3124, 39-3126 to 39-3134, and 39-3135 to 39-3139.

## JUDICIAL DECISIONS

**Creation of Legal Interest.**

This section and § 39-3125 (now § 39-3126) do not establish absolutely a legal right, privilege or other legal interest in any particular type of treatment for any individual. *Maresh v. State*, 132 Idaho 221, 970 P.2d 14 (1998).

**Cited in:** *St. Joseph Reg'l Med. Ctr. v. Nez Perce County Comm'rs*, 134 Idaho 486, 5 P.3d 466 (2000).

**39-3124. Designation of state mental health authority.** — The Idaho department of health and welfare is hereby designated the state mental health authority. The state mental health authority is responsible for taking into consideration and incorporating the recommendations and evaluations of the state planning council on mental health and the regional mental health boards in all statewide efforts to expand, improve, modify or transform the mental health service delivery system of the state. The state mental health authority shall identify the resources necessary for these efforts to be implemented on a statewide basis.

**History.**

1969, ch. 202, § 2, p. 589; am. 1973, ch. 87,

§ 9, p. 137; am. 1974, ch. 23, § 147, p. 633; am. 2006, ch. 277, § 1, p. 849.

## STATUTORY NOTES

**Cross References.**

Department of health and welfare, § 56-1001 et seq.

**Amendments.**

The 2006 amendment, by ch. 277, added the last two sentences.

**Compiler's Notes.**

Section 12 of S.L. 1973, ch. 87 read: "If any provision, section or clause of this act or application thereof to any person or circum-

stances is held invalid, such invalidity shall not affect other provisions or applications thereof which can be given effect without the invalid provision, section, or clause, and to this end, the provisions of this act are declared to be severable."

**Effective Dates.**

Section 13 of S.L. 1973, ch. 87 declared an emergency and provided the act should take effect on and after March 31, 1973.

**39-3125. State planning council on mental health.** — (1) A state planning council shall be established to serve as an advocate for adults with a severe mental illness and for seriously emotionally disturbed children and youth; to advise the state mental health authority on issues of concern, policies and programs and provide guidance to the mental health authority in the development and implementation of the state mental health systems plan; to monitor and evaluate the allocation and adequacy of mental health services within the state on an ongoing basis; to ensure that individuals with severe mental illness and serious emotional disturbances have access to treatment, prevention and rehabilitation services including those services that go beyond the traditional mental health system; to serve as a vehicle for intra-agency and interagency policy and program development; and to present to the governor and the legislature by June 30 of each year a report on the council's achievements and the impact on the quality of life that mental health services has on citizens of the state.

(2) The planning council shall be appointed by the governor and be comprised of no less than fifty percent (50%) family members and consumers



with mental illness. Membership shall also reflect to the extent possible the collective demographic characteristics of Idaho's citizens. The planning council membership shall strive to include representation from consumers, families of adult individuals with severe mental illness; families of children or youth with serious emotional disturbance; principal state agencies including the judicial branch with respect to mental health, education, vocational rehabilitation, criminal justice, title XIX of the social security act and other entitlement programs; public and private entities concerned with the need, planning, operation, funding and use of mental health services, and related support services; and the regional mental health board in each department of health and welfare region as provided for in section 39-3130, Idaho Code. The planning council may include members of the legislature and the state judiciary.

(3) The planning council members will serve a term of two (2) years or at the pleasure of the governor, provided however, that of the members first appointed, one-half (1/2) of the appointments shall be for a term of one (1) year and one-half (1/2) of the appointments shall be for a term of two (2) years. The governor will appoint a chair and a vice-chair whose terms will be two (2) years.

(4) The council may establish subcommittees at its discretion.

**History.**

I.C., § 39-3125, as added by 2006, ch. 277,  
§ 3, p. 849.

**STATUTORY NOTES****Federal References.**

Title XIX of the social security act, referred to in subsection (2), is codified as 42 USCS § 1396 et seq.

**Compiler's Notes.**

Former § 39-3125 was redesignated as § 39-3126, pursuant to S.L. 2006, ch. 277, § 2.

**39-3126. Designation of regions for comprehensive mental health services.** — Recognizing both the right of every citizen to the best mental health services that the state is able to provide and the disproportionate ability of counties to finance mental health services, the state mental health authority shall designate regions and be responsible for establishing regional comprehensive mental health services for all areas of the state. In the establishment of regions, primary consideration will be given to natural population groupings and trading areas, the regions previously designated for the establishment of other health services, the mental health needs of the people within the proposed regions, and the appropriate maximal use of available funding.

**History.**

1969, ch. 202, § 3, p. 589; am. and redesign.  
2006, ch. 277, § 2, p. 849.

### STATUTORY NOTES

#### Amendments.

The 2006 amendment, by ch. 277, renumbered the section from § 39-3125 and substituted "designate regions and be responsible for establishing" for "designate regions for the purpose of establishing" in the first sentence.

#### Compiler's Notes.

Former § 39-3126 has been redesignated as § 39-3127, pursuant to S.L. 2006, ch. 277, § 4.

### JUDICIAL DECISIONS

#### Creation of Legal Interest.

Section 39-3123 and this section do not establish absolutely a legal right, privilege or

other legal interest in any particular type of treatment for any individual. *Maresh v. State*, 132 Idaho 221, 970 P.2d 14 (1998).

**39-3127. Reciprocal agreements between states to share services.** — In such regions where natural population groupings overlap state boundaries, a regional comprehensive mental health service may be established jointly with a neighboring state or states. In such instances, the state mental health authority may enter into reciprocal agreements with these states to either share the expenses of the service in proportion to the population served; to allow neighboring states to buy services from Idaho; or to allow Idaho to purchase services that are otherwise not available to her citizens.

#### History.

1969, ch. 202, § 4, p. 589; am. and redesign. 2006, ch. 277, § 4, p. 849.

### STATUTORY NOTES

#### Amendments.

The 2006 amendment, by ch. 277, renumbered this section from § 39-3126.

redesignated as § 39-3128, pursuant to S.L. 2006, ch. 277, § 5.

#### Compiler's Notes.

Former § 39-3127 has been amended and

**39-3128. Services to be offered.** — A regional mental health service shall include one (1) or more of the services leading to the establishment of a regional comprehensive mental health center. A comprehensive mental health center may include such services as:

(1) Short-term hospitalization for psychiatric treatment in an approved medical facility within the region;

(2) Partial hospitalization;

(3) Outpatient diagnosis and treatment;

(4) 24-hour emergency psychiatric services;

(5) Community consultation and education;

(6) Diagnostic services for other agencies;

(7) Rehabilitative services;

(8) Precare and postcare services in cooperation with a state mental hospital;

(9) Training of mental health personnel;

(10) Research and evaluation;

(11) Transitional housing for individuals, including juveniles, with mental illness and/or addiction disorders to promote and sustain the ability of

these individuals to live in the community and avoid institutionalization; and

(12) Intensive supportive services such as those delivered by assertive community treatment teams. Assertive community treatment teams provide individualized treatment, rehabilitation and support services to the severely and persistently mentally ill.

**History.**

1969, ch. 202, § 5, p. 589; am. and redesisg.  
2006, ch. 277, § 5, p. 849.

**STATUTORY NOTES****Prior Laws.**

Former § 39-3128, which comprised S.L. 1969, ch. 202, § 6, p. 589, was repealed by S.L. 2006, ch. 277, § 6.

**Amendments.**

The 2006 amendment, by ch. 277, renumbered the section from § 39-3127 and added subsections (11) and (12).

**JUDICIAL DECISIONS****Availability of Services.**

There is no requirement that any particular service be provided to any individual, nor that

every service must be available to every applicant. *Maresh v. State*, 132 Idaho 221, 970 P.2d 14 (1998).

**39-3129. Petition for regional services.** — Petition for regional mental health services may be made to the state mental health authority through the regional mental health board. The petition may be submitted by units of government within the region, by public and private agencies or professional associations serving within the region, or by a private, non-profit corporation formed by citizens of that region for the purpose of planning for, petitioning for and securing mental health services for that region. The petition shall contain: (1) an identification of the petitioning group or groups; (2) a statement of the mental health needs of the region; and (3) an outline of the planning for mental health services already accomplished in the region.

**History.**

1969, ch. 202, § 7, p. 589; am. 2004, ch. 354, § 1, p. 1058; am. 2006, ch. 277, § 7, p. 849.

**STATUTORY NOTES****Amendments.**

The 2006 amendment, by ch. 277, added

“through the regional mental health board” at the end of the first sentence.

**39-3130. Regional mental health board — Members.** — A regional mental health board for each region consisting of seventeen (17) members is hereby created and shall be appointed as provided herein. Members shall be qualified electors and shall represent the following: three (3) county commissioners; two (2) department of health and welfare employees who represent the mental health system within the region; two (2) parents of children with a serious emotional disturbance, as defined in section 16-2403, Idaho Code, provided each parent’s respective child is no older than



twenty-one (21) years of age at the time of appointment; a law enforcement officer; three (3) adult mental health services consumer representatives, advocates or family members; a provider of mental health services within the region; a representative of the elementary or secondary public education system within the region; a representative of the juvenile justice system within the region; a physician or other licensed health practitioner from within the region; a representative of a hospital within the region; and a member of the regional advisory substance abuse authority. The consumer, parent and family representatives shall be selected from nominations submitted by mental health consumer and advocacy organizations. The board shall meet at least twice each year, and shall annually elect a chairperson and other officers as it deems appropriate.

The appointing authority in each region shall be a committee composed of the chairperson of the board of county commissioners of each of the counties within the region, the regional mental health program manager for the department of health and welfare and the regional director for the department of health and welfare. The committee shall meet annually or as needed to fill vacancies on the board. The list of appointments shall be submitted to the department of health and welfare.

Members of the regional mental health advisory board who are serving on the effective date of this act may continue to serve until the end of the current term of their appointment. Appointments made after the effective date of this act shall be made in a manner to achieve the representation provided in this section as soon as reasonably practical.

**History.**

1969, ch. 202, § 8, p. 589; am. 2004, ch. 354, § 2, p. 1058; am. 2009, ch. 122, § 1, p. 386.

**STATUTORY NOTES****Cross References.**

Department of health and welfare, § 56-1001 et seq.

**Amendments.**

The 2009 amendment, by ch. 122, rewrote the first paragraph, revising the membership of the boards and providing for a parent member selection process.

**Compiler's Notes.**

The phrase "effective date of this act", used twice in the last paragraph, refers to the effective date of S.L. 2004, ch. 354, which was July 1, 2004.

**39-3131. Term — Vacancies — Compensation.** — The term of each member of the board shall be for four (4) years; provided, however, that of the members first appointed, one-third (1/3) from each region shall be appointed for a term of two (2) years; one-third (1/3) for a term of three (3) years; and one-third (1/3) for a term of four (4) years. After the membership representation required in section 39-3130, Idaho Code, is achieved, vacancies shall be filled for the unexpired term in the same manner as original appointments. Board members shall be compensated as provided by section 59-509(b), Idaho Code, and such compensation shall be paid from the operating budget of the regional mental health service.

**History.**

1969, ch. 202, § 9, p. 589; am. 1980, ch. 247, § 38, p. 582; am. 2004, ch. 354, § 3, p. 1058.

**39-3132. Powers and duties. —** The regional mental health board:

(1) Shall advise the state mental health authority through the state planning council on local mental health needs within the region;

(2) Shall assist in the formulation of an operating policy for the regional service;

(3) Shall interpret the regional mental health services to the citizens and agencies of the region;

(4) Shall advise the state mental health authority and the state planning council of the progress, problems and proposed projects of the regional service;

(5) Shall collaborate with the regional advisory substance abuse authorities to develop appropriate joint programs;

(6) Shall promote improvements in the delivery of mental health services and coordinate and exchange information regarding mental health programs in the region;

(7) Shall identify gaps in available services including, but not limited to, services listed in sections 16-2402(3) and 39-3128, Idaho Code, and recommend service enhancements that address identified needs for consideration to the state mental health authority;

(8) Shall assist the state planning council on mental health with planning for service system improvement. The state planning council shall incorporate the recommendation to the regional mental health boards into the annual report provided to the governor by June 30 of each year. This report shall also be provided to the legislature; and

(9) May develop, or obtain proposals for, a service plan component for consideration by the state mental health authority.

**History.**

1969, ch. 202, § 10, p. 589; am. 2004, ch.

354, § 4, p. 1058; am. 2006, ch. 277, § 8, p. 849; am. 2009, ch. 122, § 2, p. 386.

**STATUTORY NOTES****Amendments.**

The 2006 amendment, by ch. 277, in subsection (1), substituted "state mental health authority through the state planning council" for "division of mental health"; in subsection (4), inserted "and the state planning council"; in subsection (7), inserted "including, but not limited to, services listed in section 39-3128,

Idaho Code"; and, in subsection (8), added the last two sentences.

The 2009 amendment, by ch. 122, in subsection (5), deleted "and the regional children's mental health councils" following "authorities"; and, in subsection (7), inserted "16-2402(3) and."

**39-3133. Director of the department of health and welfare —**

**Duties. —** The director of the department of health and welfare shall appoint and supervise the directors of each regional mental health service and shall supervise its program; shall prescribe uniform standards of treatment and care provided by each regional service; shall set the professional qualifications for staff positions; and make such other rules as are necessary and proper to carry out the purposes and intent of this act.

**History.**

1969, ch. 202, § 11, p. 589; am. 1974, ch. 23, § 148, p. 633; am. 2006, ch. 277, § 9, p. 849.

**STATUTORY NOTES****Cross References.**

Director of department of health and welfare, § 56-1002 et seq.

**Amendments.**

The 2006 amendment, by ch. 277, substituted "the department of health and welfare" for "division of mental health" in the section heading.

**Compiler's Notes.**

The words "this act" refer to S.L. 1969, ch. 202 which is compiled as §§ 39-3123, 39-3124, 39-3126 to 39-3134, and 39-3135 to 39-3139.

**39-3134. Coordination of services between regions and state. —**

The director of the department of health and welfare shall establish the areas of coordination between the regional comprehensive mental health services and the state mental hospital services.

**History.**

1969, ch. 202, § 12, p. 589; am. 1974, ch. 23, § 149, p. 633.

**STATUTORY NOTES****Cross References.**

Director of department of health and welfare, § 56-1002 et seq.

**Effective Dates.**

Section 182 of S.L. 1974, ch. 23 provided the

act should be in full force and effect on and after July 1, 1974.

**39-3134A. Cooperative service plan component. —** (1) The regional mental health board may undertake development of a service plan component specifically designed to address an identified unmet need in the region. Such a service plan component may be based upon the assertive community treatment team model, other available intensive models, or a model unique to the region. Such a service plan component shall specify the distinct resource contribution of each participating entity, the terms and conditions of participation and the measures to be used to assess performance and outcomes under the service plan component. The service plan component shall include governance procedures, evaluation data, and the means for amendment or termination of the service plan component.

(2) If a service plan component is developed pursuant to this section and approved by the state mental health authority, the service plan component shall be funded by the state as provided in the service plan component, subject to the appropriation made for that purpose.

(3) In addition to the funds provided for in section 39-3136, Idaho Code, the state may provide development grants for mental health and substance abuse treatment services through the state mental health authority, working in coordination as a development grant advisory group with the department of correction, the department of juvenile corrections, the courts and the regional mental health board. Such treatment services shall include, but not be limited to: twenty-four (24) hour emergency psychiatric services, short-term psychiatric beds, crisis intervention teams, transitional



housing and detoxification facilities. The development grants may be made on a multiagency, multiyear basis. Proposals for development grants shall be submitted no later than August 1 and shall be granted no later than October 1 on such forms and in such a manner as provided by rule by the state mental health authority.

(4) Nothing in this chapter shall preclude the regional mental health board from receiving private and other public funding to assist the regional mental health board in providing services.

**History.** § 5, p. 1058; am. 2006, ch. 277, § 10, p. 849; I.C., § 39-3134A, as added by 2004, ch. 354, am. 2007, ch. 218, § 1, p. 654.

STATUTORY NOTES

**Cross References.**  
Department of correction, § 20-201 et seq.  
Department of juvenile corrections, § 20-501 et seq.  
Regional mental health board, § 39-3130.

**Amendments.**  
The 2006 amendment, by ch. 277, added the last two sentences.  
The 2007 amendment, by ch. 218, divided the existing provisions of this section and added the subsection designations; and in

subsection (3), rewrote the first sentence, which formerly read: "In addition to the funds provided for in section 39-3136, Idaho Code, the state may provide development grants through the state mental health authority and in coordination with the regional mental health board for twenty-four (24) hour emergency psychiatric services, short-term psychiatric beds, transitional housing and detoxification facilities," and added the last sentence.

**39-3135. Facilities for mental health services.** — The state mental health authority may contract for the lease of facilities appropriate for the establishment of comprehensive mental health services. In order to encourage the development of comprehensive health care and whenever feasible and consistent with comprehensive mental health treatment, these facilities shall be in or near facilities within the region housing other health services. The state mental health authority may, when necessary, contract with public or private agencies for the construction of appropriate facilities when approved by the advisory council for the construction of community mental health centers.

**History.**  
1969, ch. 202, § 13, p. 589.

**39-3136. Funds.** — The financial support for the regional mental health services shall be furnished by state appropriations and by whatever federal funds are available in an identifiable section within the mental health program budget. Mental health services which are financed or contracted by local or federal sources may be incorporated into the regional mental health services subject to the approval of the state mental health authority.

**History.**  
1969, ch. 202, § 14, p. 589.

**39-3137. Services to be nondiscriminatory — Fees.** — No regional mental health service shall refuse service to any person because of race,

color or religion or because of ability or inability to pay. Persons receiving services will be charged fees in keeping with a fee schedule prepared by the state mental health authority. Fees collected shall become part of the operating budget and may be utilized by direction of the state mental health authority.

**History.**

1969, ch. 202, § 15, p. 589.

**39-3138. Existing state-county contracts for services.** — No section of this act shall invalidate, or prohibit the continuance of, existing state-county contracts for the delivery of mental health services within the participating counties.

**History.**

1969, ch. 202, § 16, p. 589.

**STATUTORY NOTES****Compiler's Notes.**

The words "this act" refer to S.L. 1969, ch. 202 which is compiled as §§ 39-3123, 39-

3124, 39-3126 to 39-3134, and 39-3135 to 39-3139.

**39-3139. Title of act.** — This act may be cited as the "Regional Mental Health Services Act."

**History.**

1969, ch. 202, § 17, p. 589.

**STATUTORY NOTES****Compiler's Notes.**

The words "this act" refer to S.L. 1969, ch. 202 which is compiled as §§ 39-3123, 39-3124, 39-3126 to 39-3134, and 39-3135 to 39-3139.

Section 18 of S.L. 1969, ch. 202 contains a separability clause which reads: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any per-

son or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

**Effective Dates.**

Section 20 of S.L. 1969, ch. 202 provided the act should take effect from and after July 1, 1969.

**CHAPTER 32****IDAHO COMMUNITY HEALTH CENTER GRANT PROGRAM****SECTION.**

39-3201. Short title.

39-3202. Community health center grant fund.

39-3203. Definitions.

39-3204. Scope of grant support.

39-3205. Application required.

**SECTION.**

39-3206. Grant award schedule.

39-3207. Award criteria.

39-3208. Fraudulent information on grant application.

39-3209. Administrative appeals.

**39-3201. Short title.** — This chapter shall be known and may be cited as the “Idaho Community Health Center Grant Program.”

**History.**

I.C., § 39-3201, as added by 2007, ch. 199,  
§ 1, p. 605.

**STATUTORY NOTES**

**Prior Laws.**

Former §§ 39-3201 to 39-3210, which comprised S.L. 1974, ch. 178, § 2, p. 1467, were repealed by S.L. 2002, ch. 345, § 1, effective July 1, 2002.

Another former § 39-3201, which comprised 1967, ch. 5, § 1, was repealed by S.L. 1974, ch. 178, § 1.

**39-3202. Community health center grant fund.** — There is hereby created in the state treasury a fund known as the “Community Health Center Grant Fund.” Subject to appropriation by the legislature, moneys in the fund shall be used exclusively for the purpose of grants for community health centers in order to improve access to health care services for Idahoans and to provide for the administration of grants pursuant to this chapter.

**History.**

I.C., § 39-3202, as added by 2007, ch. 199,  
§ 1, p. 605.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-3202 was repealed. See Prior Laws, § 39-3201.

Another former § 39-3202, which comprised 1967, ch. 5, § 2, was repealed by S.L. 1974, ch. 178, § 1.

**39-3203. Definitions.** — As used in this chapter:

(1) “Applicant” means an entity submitting documents required by the community health center grant program for the purpose of requesting a grant from the community health center grant fund.

(2) “Application period” means the time period from July 1 to August 30 of the state fiscal year for which funding is requested.

(3) “Approval” means written notification that the application will be awarded funding through the community health center grant fund.

(4) “Board” means the health care access grant review board, as established in section 39-5904, Idaho Code.

(5) “Community health center” or “CHC” means a nonprofit organization or county-based governmental entity that:

(a) Provides comprehensive primary and preventive medical services and provides or makes referrals for dental and mental health services;

(b) Provides outpatient services to persons who are uninsured or have medicaid coverage without regard to a person’s ability to pay, provided that a minimum of twenty-five percent (25%) of such persons served by the organization or entity are uninsured;

(c) Charges for services using a sliding fee schedule based upon income and family size; and



(d) Is governed by a community-based board.

(6) "Community health center grant" means a grant awarded pursuant to this chapter.

(7) "Community health center grant program" means the program that administers the community health center grant fund.

(8) "Department" means the department of health and welfare.

(9) "Director" means the director of the department of health and welfare.

(10) "Grant period" means the time period from July 1 through June 30 (state fiscal year) for which funding is granted.

**History.**

I.C., § 39-3203, as added by 2007, ch. 199,  
§ 1, p. 605.

**STATUTORY NOTES**

**Cross References.**

Department of health and welfare, § 56-1001 et seq.

**Prior Laws.**

Former § 39-3203 was repealed. See Prior Laws, § 39-3201.

**39-3204. Scope of grant support.** — The board may award grants, in accordance with the procedures and criteria in this chapter, to community health centers for the purpose of improving access to health care services.

(1) Individual grant awards will be limited to a total of five hundred thousand dollars (\$500,000) for direct and indirect costs, per year.

(2) No project may be funded for more than a total of one (1) year.

(3) In addition to other uses as approved by the board, funds awarded under a grant may be used for the purchase, construction, renovation or improvement of real property or for projects which are solely or predominantly designed for the purchase of equipment, including information technology and electronic health records.

**History.**

I.C., § 39-3204, as added by 2007, ch. 199,  
§ 1, p. 605.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-3204 was repealed. See Prior Laws, § 39-3201.

**39-3205. Application required.** — (1) A completed community health center grant application must be submitted by the applicant for the purpose of requesting a grant on or before the conclusion of the application period specified for the appropriate grant cycle.

(2) Each application shall include:

(a) Identification of geographical area to be served;

(b) Individual or entity requesting funds;

(c) Narrative description of the community health needs and the methods to be used to address such needs and demonstrate the potential of the

project to improve patient health outcomes and access to health care services in the community;

(d) Identification of measurable goals, objectives and patient health outcomes to be used to reach the goals, and the resources necessary to complete each activity;

(e) Estimation of how long it will take to accomplish the individual activities of the project;

(f) Demonstrated community support for the project;

(g) Proposed project budget including:

(i) A line item budget with a brief description of each expense category, including any anticipated operating expenses, capital and equipment or contract expenses;

(ii) Documentation of one (1) or more vendor price quotes for all proposed equipment purchases;

(iii) Contact person for verification of fiscal information; and

(h) Federal tax identification number.

(3) All applications must include the required information.

(4) The grant application and any attachments submitted by the applicant shall be the primary source of information for awarding a grant.

**History.**

I.C., § 39-3205, as added by 2007, ch. 199,  
§ 1, p. 605.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-3205 was repealed. See Prior Laws, § 39-3201.

**39-3206. Grant award schedule.** — The board shall conduct the grant process in accordance with the following schedule:

(1) The director shall develop an application form in conformance with section 39-3205, Idaho Code, and make guidance available no later than July 1 which shall initiate the application period.

(2) The completed application shall be submitted no later than August 30 of the application period.

(3) The board shall issue notification to every applicant regarding the disposition of their grant request by October 30 of the grant period.

(4) Funds for approved grants shall be disbursed during November of that grant period or over the course of the current grant year as funds become available.

**History.**

I.C., § 39-3206, as added by 2007, ch. 199,  
§ 1, p. 605.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-3206 was repealed. See Prior Laws, § 39-3201.

**39-3207. Award criteria.** — The board shall award grants based on the following weighted criteria:

(1) Background of applicant organization. The applicant must show adequate experience, knowledge, and qualifications to adequately perform the scope of work: weight = 15%;

(2) Community support. The applicant must demonstrate community support for the project: weight = 10%;

(3) Specificity and clarity of scope of project. The proposal will be evaluated based upon demonstrated need and the extent to which the goals and objectives are specific, measurable, and relevant to the purpose of the proposal and the activities planned to accomplish those objectives are germane and can be sustained beyond the grant time frame: weight = 30%;

(4) Monitoring and evaluation. The proposal will be evaluated based on the extent to which the monitoring and evaluation system will document program progress, or improved patient health outcomes if applicable, and measure effectiveness: weight = 15%;

(5) Budget. The proposal will be evaluated based on the extent to which a detailed itemized budget and justification are consistent with stated objectives and planned program activities: weight = 20%;

(6) Geographical community health center equity. The board shall consider the geographical distribution of past grant awards and shall endeavor to meet community health centers' needs in an equitable manner statewide: weight = 10%.

**History.**

I.C., § 39-3207, as added by 2007, ch. 199,  
§ 1, p. 605.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-3207 was repealed. See Prior Laws, § 39-3201.

**39-3208. Fraudulent information on grant application.** — Providing false information on any application or document submitted under this chapter is a misdemeanor and grounds for declaring the applicant ineligible. Any and all funds determined to have been acquired on the basis of fraudulent information must be returned to the community health center grant fund. This section shall not limit other remedies which may be available for the filing of false or fraudulent applications.

**History.**

I.C., § 39-3208, as added by 2007, ch. 199,  
§ 1, p. 605.

**STATUTORY NOTES**

**Cross References.**

Penalty for misdemeanor when not otherwise provided, § 18-113.

**Prior Laws.**

Former § 39-3208 was repealed. See Prior Laws, § 39-3201.



**39-3209. Administrative appeals.** — Applicants aggrieved by the award or failure to award a grant pursuant to this chapter shall be afforded the remedies provided in chapter 52, title 67, Idaho Code.

**History.**  
I.C., § 39-3209, as added by 2007, ch. 199,  
§ 1, p. 605.

STATUTORY NOTES

**Prior Laws.**  
Former § 39-3209 was repealed. See Prior  
Laws, § 39-3201.

CHAPTER 33

IDAHO RESIDENTIAL CARE OR ASSISTED LIVING  
ACT

SECTION.	SECTION.
39-3301. Legislative intent and declaration.	39-3327 — 39-3329. [Reserved.]
39-3302. Definitions.	39-3330. Advisory council.
39-3303. Payment levels.	39-3331. Powers and duties of the advisory council.
39-3304. Types of facilities.	39-3332. Meetings.
39-3305. Rules.	39-3333. Reimbursement of expenses.
39-3306. State licensing to supersede local regulation.	39-3334 — 39-3339. [Reserved.]
39-3307. Admissions.	39-3340. Licensing.
39-3308. Assessment.	39-3341 — 39-3344. [Repealed.]
39-3309. Negotiated service agreement.	39-3345. Denial or revocation of a license.
39-3310, 39-3311. [Repealed.]	39-3346 — 33-3348. [Repealed.]
39-3312. Responsibilities of licensee. [Re- pealed.]	39-3349. Responsibility for inspections and technical assistance.
39-3313. Admission agreements.	39-3350. Consulting services. [Repealed.]
39-3314. Termination of admission agree- ments.	39-3351. Exemptions.
39-3315. Admission records.	39-3352. Unlicensed residential care or as- sisted living facilities.
39-3316. Resident rights.	39-3353. Placement of persons into an unli- censed residential or assisted living facility. [Repealed.]
39-3317. Notice of rights.	39-3354. Waiver or variance.
39-3318. Facility response to incidents and complaints.	39-3354A. Special waiver permitted.
39-3319, 39-3320. [Repealed.]	39-3355. Inspections.
39-3321. Qualifications and requirements of administrator.	39-3356. Complaints.
39-3322. Qualifications and requirements for facility staff.	39-3357. Enforcement process.
39-3323. Training. [Repealed.]	39-3358. Specified remedies.
39-3324. Staff training.	39-3359. Transfer of residents. [Repealed.]
39-3325. Requirements for location and physical environment of facil- ities.	39-3360 — 39-3369. [Reserved.]
39-3326. Medications.	39-3370 — 39-3389. [Repealed.]
	39-3390, 39-3391. [Reserved.]
	39-3392, 33-3393. [Repealed.]

**39-3301. Legislative intent and declaration.** — The purpose of a residential care or assisted living facility in Idaho is to provide a humane, safe, and homelike living arrangement for adults who need some assistance with activities of daily living and personal care but do not require the level of care identified under section 39-1301(b), Idaho Code, other than for short exceptional stays meaning a treatment window designed to allow a resident

to receive treatment for a short term acute episode as determined by a licensed professional nurse.

The state will encourage the development of facilities tailored to the needs of individual populations which operate in integrated settings in communities where sufficient supportive services exist to provide the resident, if appropriate, an opportunity to work and be involved in recreation and education opportunities. Employment, recreational and educational opportunities for people with disabilities shall be offered in the most integrated setting consistent with their needs.

A residential care or assisted living facility shall be operated and staffed by individuals who have the knowledge and experience required to provide safe and appropriate services to all residents of the facility.

The administrator of the facility shall ensure that an objective, individualized assessment to determine resident needs is conducted, develop a comprehensive negotiated plan of care to meet those needs, deliver appropriate services to meet resident needs, and ensure resident rights are honored.

#### History.

I.C., § 39-3301, as added by 1990, ch. 116, § 2, p. 239; am. 1993, ch. 373, § 1, p. 1345;

am. 2000, ch. 274, § 9, p. 799; am. 2005, ch. 280, § 3, p. 880.

#### STATUTORY NOTES

##### Prior Laws.

Former §§ 39-3301 to 39-3303 and 39-3305 to 39-3310, were repealed by S.L. 1990, ch. 116, § 1, effective July 1, 1991.

39-3301. (1969, ch. 203, § 1, p. 595; am. 1972, ch. 200, § 1, p. 505; am. 1974, ch. 23, § 150, p. 633; am. 1976, ch. 311, § 1, p. 1073; am. 1986, ch. 340, § 1, p. 844; am. 1989, ch. 193, § 6, p. 475; am. 1989, ch. 205, § 1, p. 504.)

39-3302. (I.C., § 39-3302, as added by 1976, ch. 311, § 3, p. 1073; am. 1989, ch. 193, § 7, p. 475.)

39-3303. (1969, ch. 203, § 3, p. 595; am. 1970, ch. 5, § 2, p. 7; am. 1972, ch. 200, § 4, p. 505; am. 1974, ch. 23, § 152, p. 633; am. 1976,

ch. 311, § 4, p. 1073; am. 1989, ch. 193, § 8, p. 475.)

39-3305. (1969, ch. 203, § 5, p. 595; am. 1970, ch. 5, § 3, p. 7; am. 1972, ch. 200, § 6, p. 505; am. 1976, ch. 311, § 5, p. 1073; am. 1989, ch. 193, § 9, p. 475.)

39-3306. (I.C., § 39-3306, as added by 1976, ch. 311, § 6, p. 1073.)

39-3307. (I.C., § 39-3307, as added by 1976, ch. 311, § 7, p. 1073.)

39-3308. (I.C., § 39-3308, as added by 1976, ch. 311, § 8, p. 1073; am. 1989, ch. 193, § 10, p. 475.)

39-3309. (I.C., § 39-3309, as added by 1976, ch. 311, § 9, p. 1073.)

39-3310. (I.C., § 39-3310, as added by 1989, ch. 205, § 2, p. 504.)

#### RESEARCH REFERENCES

**Am. Jur.** — 40A Am. Jur. 2d, Hospitals and Asylums, § 1 et seq.

#### **39-3302. Definitions.** — As used in this chapter:

(1) "Abuse" means a nonaccidental act of sexual, physical or mental mistreatment or injury of a resident through the action or inaction of another individual.

(2) "Activities of daily living" means the performance of basic self-care activities in meeting an individual's needs to sustain him in a daily living environment.

(3) "Administrator" means an individual, properly licensed by the bureau

of occupational licensing, who is responsible for day-to-day operation of a residential care or assisted living facility.

(4) "Adult" means a person who has attained the age of eighteen (18) years.

(5) "Advocate" means an authorized or designated representative of a program or organization operating under federal or state mandate to represent the interests of mentally ill, developmentally disabled, or elderly residents.

(6) "Assessment" means the conclusion reached using uniform criteria which identifies resident strengths, weaknesses, risks and needs, to include functional, medical and behavioral needs. The assessment criteria shall be developed by the department and residential care or assisted living council.

(7) "Authorized provider" in this chapter means an individual who is a nurse practitioner or clinical nurse specialist or a physician assistant.

(8) "Board" means the board of health and welfare.

(9) "Chemical restraint" means a medication used to control behavior or to restrict freedom of movement and is not a standard treatment for the resident's condition.

(10) "Core issues" means abuse, neglect, exploitation, inadequate care, a situation in which the facility has operated for more than thirty (30) days without a licensed administrator designated the responsibility for the day-to-day operations of the facility, inoperable fire detection or extinguishing systems with no fire watch in place pending the correction of the system, and surveyors denied access to records, residents or facilities.

(11) "Department" means the Idaho department of health and welfare.

(12) "Director" means the director of the Idaho department of health and welfare.

(13) "Exploitation" means the misuse of a resident's funds, property, resources, identity or person for profit or advantage.

(14) "Facility" means a residential care or assisted living facility.

(15) "Governmental unit" means the state, any county, any city, other political subdivision, or any department, division, board, or other agency thereof.

(16) "Inadequate care" occurs when a facility fails to provide the services required to meet the terms of the negotiated service agreement or provide for room, board, activities of daily living, supervision, first aid, assistance and monitoring of medications, emergency intervention, coordination of outside services, a safe living environment; or engages in violations of resident's rights, or takes residents who have been admitted in violation of the provisions of section 39-3307, Idaho Code.

(17) "License" means a basic permit to operate a residential care or assisted living facility.

(18) "Licensee" means the owner of a license to operate a residential care or assisted living facility under this chapter.

(19) "Licensing agency" means the unit of the department of health and welfare that conducts inspections and surveys and issues licenses based on compliance with this chapter.

(20) "Neglect" means failure to provide food, clothing, shelter, or medical care necessary to sustain the life and health of a resident.



(21) "Negotiated service agreement" means the agreement reached by the resident and/or their representative and the facility, based on the assessment, physician's orders, admission records, and desires of the resident, and which outlines services to be provided and the obligations of the facility and the resident.

(22) "Personal assistance" means the provision by the staff of the facility of one (1) or more of the following services:

- (a) Assisting the resident with activities of daily living.
- (b) Arranging for supportive services.
- (c) Being aware of the resident's general whereabouts.
- (d) Monitoring the activities of the resident while on the premises of the facility to ensure the resident's health, safety and well-being.

(23) "Political subdivision" means a city or county.

(24) "Resident" means an adult who lives in a residential care or assisted living facility.

(25) "Residential care or assisted living facility" means a facility or residence, however named, operated on either a profit or nonprofit basis for the purpose of providing necessary supervision, personal assistance, meals and lodging to three (3) or more adults not related to the owner.

(26) "Room and board" means lodging and meals.

(27) "Substantial compliance" means a facility has no core issue deficiencies.

(28) "Supervision" means administrative activity which provides the following: protection, guidance, knowledge of the resident's general whereabouts, and assistance with activities of daily living. The administrator is responsible for providing appropriate supervision based on each resident's negotiated service agreement or other legal requirements.

(29) "Supportive services" means the specific services that are provided to the resident in the community.

#### **History.**

I.C., § 39-3302, as added by 1990, ch. 116, § 2, p. 239; am. 1993, ch. 373, § 2, p. 1345;

am. 1996, ch. 207, § 1, p. 631; am. 2000, ch. 274, § 10, p. 799; am. 2005, ch. 280, § 4, p. 880.

#### **STATUTORY NOTES**

#### **Cross References.**

Board of health and welfare, § 56-1005  
Bureau of occupational licenses, § 67-2602.

#### **Prior Laws.**

Former § 39-3302 was repealed. See Prior Laws, § 39-3301.

**39-3303. Payment levels.** — (1) Clients of the department who are receiving financial aid as set out in sections 56-207, 56-208 and 56-209a, Idaho Code, seeking placement in a residential care or assisted living facility will be assessed by the department regarding their need for specific types of services and supports. This assessment will determine the reimbursement rate to the service provider.

Eligible participants must be allowed to choose the facility or services that are appropriate to meet their medical needs and financial ability to pay. The department shall promulgate rules outlining the payment policy and calculations for clients of the department through negotiated rulemaking.

(2) Residents who are not clients of the department shall:

(a) Be assessed by the facility regarding their need for specific types of services and supports. This assessment, and the individual negotiated service agreement, shall determine the rate charged to the resident.

(b) Receive a full description of services provided by the facility and associated costs upon admission, according to facility policies and procedures. A thirty (30) day notice must be provided prior to a change in facility billing practices or policies. Billing practices shall be transparent and understandable.

(c) Be charged for the use of furnishings, equipment, supplies and basic services as agreed upon in the negotiated service agreement or as identified in the admission agreement.

**History.**

I.C., § 39-3303, as added by 1990, ch. 116, § 2, p. 239; am. 1993, ch. 373, § 3, p. 1345;

am. 1996, ch. 207, § 2, p. 631; am. 2000, ch. 274, § 11, p. 799; am. 2005, ch. 280, § 5, p. 880; am. 2009, ch. 214, § 1, p. 673.

**STATUTORY NOTES****Prior Laws.**

Former § 39-3303 was repealed. See Prior Laws, § 39-3301.

subsection (1) designation and added subsection (2).

**Effective Dates.**

Section 2 of S.L. 2009, ch. 214 declared an emergency. Approved April 23, 2009.

**Amendments.**

The 2009 amendment, by ch. 214, added the

**39-3304. Types of facilities.** — The state will foster the development of, and provide incentives for, residential care or assisted living facilities serving specific mentally ill and developmentally or physically disabled populations which are small in size to provide for family and homelike arrangements. Small facilities of eight (8) beds or less for individuals with developmental or physical disabilities or dementia and fifteen (15) beds or less for individual with mental illness will provide residents with the opportunity for normalized and integrated living in typical homes in neighborhoods and communities.

**History.**

I.C., § 39-3304, as added by 1990, ch. 116, § 2, p. 239; am. 1993, ch. 373, § 4, p. 1345;

am. 2000, ch. 274, § 12, p. 799; am. 2005, ch. 280, § 6, p. 880.

**STATUTORY NOTES****Prior Laws.**

Former § 39-3304, which comprised 1969,

ch. 203, § 4, p. 595; am. 1972, ch. 200, § 5, p. 505, was repealed by S.L. 1985, ch. 24, § 1.

**39-3305. Rules.** — (1) The board shall have the authority to adopt, amend, repeal and enforce such rules as may be necessary or proper to carry out the purpose and intent of this chapter which are designed to protect the health, safety and individual rights of residents in residential care or assisted living facilities. The department shall exercise the powers and perform the duties conferred upon it by this chapter, not inconsistent with any statute of this state. These rules shall be promulgated in accordance with the provisions of the Idaho administrative procedure act. The depart-

ment shall, through negotiated rulemaking, promulgate rules in the following areas:

- (a) Minimum criteria for the assessment;
  - (b) Minimum criteria for the negotiated service agreement;
  - (c) Guidelines for the facility's physical environment and location;
  - (d) Criteria for the facility's license, to include:
    - (i) Initial license application criteria and procedures;
    - (ii) License renewal criteria, procedures and timing;
    - (iii) Inspection criteria and procedures;
    - (iv) Denial and revocation of license criteria and procedures; and
    - (v) Effect of previous revocation or denial of license.
  - (e) Remedy and enforcement provisions for noncompliance with statute.
- (2) Rules shall be drafted and promulgated following negotiation with interested providers, assisted living nurse associations and advocates.

**History.**

I.C., § 39-3305, as added by 1990, ch. 116,  
§ 2, p. 239; am. 1993, ch. 373, § 5, p. 1345;

am. 2000, ch. 274, § 13, p. 799; am. 2005, ch.  
280, § 7, p. 880.

**STATUTORY NOTES**

**Cross References.**

Administrative procedure act, § 67-5201 et  
seq.

**Prior Laws.**

Former § 39-3305 was repealed. See Prior  
Laws, § 39-3301.

**39-3306. State licensing to supersede local regulation.** — This chapter and the rules promulgated pursuant to this chapter shall supersede any program of any political subdivision of the state which licenses or sets standards for residential care or assisted living facilities.

**History.**

I.C., § 39-3306, as added by 1990, ch. 116,  
§ 2, p. 239; am. 1993, ch. 373, § 6, p. 1345;

am. 2000, ch. 274, § 14, p. 799; am. 2005, ch.  
280, § 8, p. 880.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-3306 was repealed. See Prior  
Laws, § 39-3301.

**39-3307. Admissions.** — (1) A residential care or assisted living facility shall not admit or retain any resident requiring a level of services or type of service for which the facility is not licensed or which the facility does not provide or arrange for, or if the facility does not have the staff, appropriate in numbers and with appropriate skills, to provide. Prospective residents will also be informed of options and rights available through other programs, to include medicare benefits where applicable. The department shall provide forms for this.

(2) The department shall develop rules governing admissions to residential care or assisted living facilities.



**History.**

I.C., § 39-3307, as added by 1990, ch. 116, § 9, p. 880.  
§ 2, p. 239; am. 1996, ch. 207, § 3, p. 631; am. 2000, ch. 274, § 15, p. 799; am. 2005, ch. 280, § 9, p. 880.

**STATUTORY NOTES****Prior Laws.**

Former § 39-3307 was repealed. See Prior Laws, § 39-3301.

**39-3308. Assessment.** — The department shall employ uniform assessment criteria to assess function and cognitive disability. The conclusions shall be deemed the assessment and shall be used to provide appropriate placement and funding for service needs. The assessment shall also be used to ensure funding is cost-effective and appropriate when compared to other state programs relevant to the needs of the client being assessed. The department shall develop rules regarding:

- (1) Qualifications of persons making the assessments.
- (2) Department's responsibility for state pay clients.
- (3) Time frames for completing an assessment.
- (4) Information to be included in an assessment.
- (5) Use of an assessment in developing the negotiated service agreement.
- (6) Use of assessments in determining facility staffing ratios.
- (7) Use of assessments for determining the ability of provider and facility to meet residents' needs and special training or licenses that may be required in caring for certain residents.

**History.**

I.C., § 39-3308, as added by 1996, ch. 207, § 5, p. 631; am. 2005, ch. 280, § 10, p. 880.

**STATUTORY NOTES****Prior Laws.**

Former § 39-3308, which comprised I.C., § 39-3308, as added by 1990, ch. 116, § 2, p. 239, was repealed by S.L. 1996, ch. 207, § 4, effective July 1, 1996. Another former 39-3308 was repealed. See Prior Laws, § 39-3301.

**39-3309. Negotiated service agreement.** — (1) Each resident shall be provided a negotiated service agreement to provide for coordination of services and for guidance of the staff and management of the facility where the person resides. Upon completion, the agreement shall clearly identify the resident and describe the services to be provided to the resident and how such services are to be delivered. The negotiated service agreement shall be reviewed at least annually and upon any change in a diagnosis for the resident or other condition requiring substantially different additional or replacement services.

- (2) A negotiated service agreement shall be based on the person's:
  - (a) Assessment;
  - (b) Service needs for activities of daily living;
  - (c) Need for limited nursing services;
  - (d) Need for medication assistance;

- (e) Frequency of needed services;
- (f) Level of assistance, i.e., standby, reminding, total;
- (g) Signature and approval of agreement; and
- (h) Signing date that the plan was approved and date plan will be reviewed.

(3) The administrator shall consult the resident, the resident's family, friends, case manager and/or consumer coordinator, as necessary, in the development of the resident's service agreement.

(4) A copy of the agreement shall be given to the resident and a copy placed in the resident's records file no later than two (2) weeks from admission.

(5) A resident shall be given the choice and control of how and what services the facility shall provide, or external vendors shall provide, to the extent the resident can make choices, so long as the resident's choice does not violate the provisions of section 39-3307(1), Idaho Code.

(6) On an exception basis, a record shall be made of any changes or inability to provide services outlined in the negotiated service agreement.

(7) The agreement shall include a statement regarding when there is no need for access to external services.

(8) There shall be documentation of refusal of certain treatments by competent resident or legal health care representative.

#### **History.**

I.C., § 39-3309, as added by 1996, ch. 207, § 7, p. 631; am. 2005, ch. 280, § 11, p. 880.

#### **STATUTORY NOTES**

##### **Prior Laws.**

Former § 39-3309, which comprised I.C., § 39-3309, as added by 1990, ch. 116, § 2, p. 239, was repealed by S.L. 1996, ch. 207, § 6, effective July 1, 1996.

Another former § 39-3309 was repealed. See Prior Laws, § 39-3301.

#### **39-3310, 39-3311. [Repealed.]**

#### **STATUTORY NOTES**

##### **Prior Laws.**

Former § 39-3310 was repealed. See Prior Laws, § 39-3301.

as added by 1990, ch. 116, § 2, p. 239; am. 1996, ch. 207, § 8, p. 631; am. 2000, ch. 274, § 16, p. 799.]

##### **Compiler's Notes.**

The following sections were repealed by S.L. 2005, ch. 280, § 1:  
39-3310. Periodic review. [I.C., § 39-3310,

39-3311. Physician's order. [I.C., § 39-3311, as added by 1990, ch. 116, § 2, p. 239; am. 1996, ch. 207, § 9, p. 631; am. 2000, ch. 274, § 17, p. 799.

**39-3312. Responsibilities of licensee. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised, I.C., § 39-3312, as added by 1990, ch. 116, § 2, p. 239,

was repealed by S.L. 1996, ch. 207, § 10, effective July 1, 1996.

**39-3313. Admission agreements.** — (1) Upon admission to a residential care or assisted living facility, the facility and the resident shall enter into an admission agreement. The admission agreement shall clearly outline who is financially responsible for resident charges and shall clearly outline the facility's resident discharge policies. The agreement shall be in writing and shall be signed by both parties. The board shall promulgate rules governing admission agreements which may be integrated with the negotiated service agreement.

(2) A resident may be discharged for the following:

- (a) A resident's failure to pay;
- (b) The facility's inability to meet the resident's needs;
- (c) The resident's needs are greater than the level of care provided by the specific facility;
- (d) The resident is a danger to himself or others.

(3) A resident shall have the right to appeal a discharge as established by department rule.

(4) Should a residential care or assisted living facility choose not to carry professional liability insurance, that information shall be disclosed, in writing, to residents upon admission.

**History.**

I.C., § 39-3313, as added by 1990, ch. 116, § 2, p. 239; am. 1996, ch. 207, § 11, p. 631;

am. 2000, ch. 274, § 18, p. 799; am. 2005, ch. 280, § 12, p. 880.

**39-3314. Termination of admission agreements.** — Admission agreements may only be terminated pursuant to rules promulgated by the board.

**History.**

I.C., § 39-3314, as added by 1990, ch. 116, § 2, p. 239; am. 2000, ch. 274, § 19, p. 799.

**39-3315. Admission records.** — (1) Records required for admission to a facility shall be maintained and updated for administrative purposes only and shall be confidential. Their availability, subject to Idaho department of health and welfare rules, chapter 1, title 5, shall be limited to administration, professional consultants, the resident's physician or authorized provider, and representatives of the licensing agency. They shall include at least the following information:

- (a) Name and social security number.
- (b) Permanent address if other than the facility.
- (c) Marital status and sex.
- (d) Birthplace and date of birth.



- (e) Name, address and telephone number of responsible agent or agency.
  - (f) Personal physician or authorized provider.
  - (g) Admission date.
  - (h) Results of a physical or health status examination performed by a licensed physician or authorized provider within six (6) months prior to admission.
  - (i) A list of medications, treatments and diet prescribed for the resident which is signed and dated by the physician or authorized provider giving the order(s).
  - (j) Religious affiliation if resident chooses to so state.
  - (k) Interested relatives and friends other than those in paragraph (e) of this subsection. Names, addresses and telephone numbers of family members and/or significant others.
  - (l) Resident assessment.
  - (m) The results of any psychosocial evaluations or histories to ensure all resident needs are being met.
- (2) The resident's personal or religious preferences with respect to medical treatment and medications shall be honored.

**History.**

I.C., § 39-3315, as added by 1990, ch. 116,  
§ 2, p. 239; am. 1996, ch. 207, § 12, p. 631;

am. 2000, ch. 274, § 20, p. 799; am. 2005, ch.  
280, § 13, p. 880.

**STATUTORY NOTES****Compiler's Notes.**

The letter "s" enclosed in parentheses so  
appeared in the law as enacted.

**39-3316. Resident rights.** — A residential care or assisted living facility must protect and promote the rights of each resident, including each of the following rights:

(1) Resident records. Each facility must maintain and keep current a record of the following information on each resident:

- (a) A copy of the resident's current negotiated service agreement and physician's order.
- (b) Written acknowledgement that the resident has received copies of the rights.
- (c) A record of all personal property and funds which the resident has entrusted to the facility, including copies of receipts for the property.
- (d) Information about any specific health problems of the resident which may be useful in a medical emergency.
- (e) The name, address and telephone number of an individual identified by the resident who should be contacted in the event of an emergency or death of the resident.
- (f) Any other health-related, emergency, or pertinent information which the resident requests the facility to keep on record.
- (g) The current admission agreement between the resident and the facility.

(2) Privacy. Each resident must be assured the right to privacy with regard to accommodations, medical and other treatment, written and

telephone communications, visits, and meetings of family and resident groups.

(3) Humane care and environment (dignity and respect).

(a) Each resident shall have the right to humane care and a humane environment, including the following:

(i) The right to a diet which is consistent with any religious or health-related restrictions.

(ii) The right to refuse a restricted diet.

(iii) The right to a safe and sanitary living environment.

(b) Each resident shall have the right to be treated with dignity and respect, including:

(i) The right to be treated in a courteous manner by staff.

(ii) The right to receive a response from the facility to any request of the resident within a reasonable time.

(iii) The right to be communicated with, orally and/or in writing, in a language they understand.

(4) Personal possessions. Each resident shall have the right to:

(a) Wear his own clothing.

(b) Determine his own dress or hair style.

(c) Retain and use his own personal property in his own living area so as to maintain individuality and personal dignity.

(d) Be provided a separate storage area in his own living area and at least one (1) locked cabinet or drawer for keeping personal property.

(5) Personal funds. Residents whose board and care is paid for by public assistance shall retain, for their personal use, the difference between their total income and the applicable board and care allowance established by department rules.

(a) A facility shall not require a resident to deposit his personal funds with the facility.

(b) Once the facility accepts the written authorization of the resident, it must hold, safeguard, and account for such personal funds under a system established and maintained by the facility in accordance with this paragraph.

(6) Management of personal funds. Upon a facility's acceptance of written authorization of a resident, the facility must manage and account for the personal funds of the resident deposited with the facility as follows:

(a) The facility must deposit any amount of a resident's personal funds in excess of five (5) times the personal needs allowance in an interest-bearing account (or accounts) that is separate from any of the facility's operating accounts and credit all interest earned on such separate account to such account. The facility must maintain any other personal funds in a noninterest-bearing account or petty cash fund.

(b) The facility must assure a full and complete separate accounting of each resident's personal funds, maintain a written record of all financial transactions involving each resident's personal funds deposited with the facility, and afford the resident (or a legal representative of the resident) reasonable access to such record.

(c) Upon the death of a resident with such an account, the facility must promptly convey the resident's personal funds (and a final accounting of

such funds) to the individual administering the resident's estate. For clients of the department, the remaining balance of funds shall be refunded to the department.

(7) Access and visitation rights. Each facility must permit:

(a) Immediate access to any resident by any representative of the department, by the state ombudsman for the elderly or his designees, or by the resident's individual physician.

(b) Immediate access to a resident, subject to the resident's right to deny or withdraw consent at any time, by immediate family or other relatives.

(c) Immediate access to a resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident.

(d) Reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

(8) Employment. Each resident shall have the right to refuse to perform services for the facility except as contracted for by the resident and the administrator of the facility. If the resident is hired by the facility to perform services as an employee of the facility, the wage paid to the resident shall be consistent with state and federal law.

(9) Confidentiality. Each resident shall have the right to confidentiality of personal and clinical records.

(10) Freedom from abuse, neglect, and restraints. Each resident shall have the right to be free from physical, mental or sexual abuse, neglect, corporal punishment, involuntary seclusion, and any physical or chemical restraints.

(11) Freedom of religion. Each resident shall have the right to practice the religion of his choice or to abstain from religious practice. Residents shall also be free from the imposition of the religious practices of others.

(12) Control and receipt of health-related services. Each resident shall have the right to control his receipt of health-related services, including:

(a) The right to retain the services of his own personal physician, dentist and other health care professionals.

(b) The right to select the pharmacy or pharmacist of their choice so long as it meets the statute and rules governing residential care or assisted living and the policies and procedures of the residential care or assisted living facility.

(c) The right to confidentiality and privacy concerning his medical or dental condition and treatment.

(d) The right to refuse medical services based on informed decision making. Refusal of treatment does not relieve the facility of its obligations under this chapter.

(13) Grievances. Each resident shall have the right to voice grievances with respect to treatment or care that is (or fails to be) furnished, without discrimination or reprisal for voicing the grievances and the right to prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

(14) Participation in resident and family groups. Each resident shall have the right to organize and participate in resident groups in the facility and



the right of the resident's family to meet in the facility with the families of other residents in the facility.

(15) Participation in other activities. Each resident shall have the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.

(16) Examination of survey results. Each resident shall have the right to examine, upon reasonable request, the results of the most recent survey of the facility conducted by the department with respect to the facility and any plan of correction in effect with respect to the facility.

(17) Access by advocates and representatives. A residential care or assisted living facility shall permit advocates and representatives of community legal services programs, whose purposes include rendering assistance without charge to residents, to have access to the facility at reasonable times in order to:

(a) Visit, talk with, and make personal, social and legal services available to all residents.

(b) Inform residents of their rights and entitlements, and their corresponding obligations, under state, federal and local laws by distribution of educational materials and discussion in groups and with individuals.

(c) Assist residents in asserting their legal rights regarding claims for public assistance, medical assistance and social security benefits, and in all other matters in which residents are aggrieved, which may be provided individually, or in a group basis, and may include organizational activity, counseling and litigation.

(d) Engage in all other methods of assisting, advising and representing residents so as to extend to them the full enjoyment of their rights.

(e) Communicate privately and without restrictions with any resident who consents to the communication.

(f) Observe all common areas of the facility.

(18) Access by protection and advocacy system. A residential care or assisted living facility shall permit advocates and representatives of the protection and advocacy system designated by the governor pursuant to 42 U.S.C. section 15043 and 42 U.S.C. section 10801 et seq. access to residents, facilities and records in accordance with applicable federal statutes and regulations.

(19) Access by the long-term care ombudsman. A residential care or assisted living facility shall permit advocates and representatives of the long-term care ombudsman program pursuant to 42 U.S.C. section 3058, section 67-5009, Idaho Code, and IDAPA 15.01.03, rules of the office [commission] on aging, access to residents, facilities and records in accordance with applicable federal and state law, rules and regulations.

**History.**

I.C., § 39-3316, as added by 1990, ch. 116, § 2, p. 239; am. 1996, ch. 207, § 13, p. 631;

am. 2000, ch. 274, § 21, p. 799; am. 2005, ch. 280, § 14, p. 880.

## STATUTORY NOTES

**Cross References.**

Ombudsman for the elderly, § 67-5009.

**Compiler's Notes.**

The words in parentheses so appeared in the law as enacted.

The Idaho office on aging, referred to in subsection (19), was established by S.L. 1976, Chapter 188, which was repealed by S.L. 1995, ch. 189, § 1, effective July 1, 1995. See Idaho commission on aging, § 67-5001 et seq.

**39-3317. Notice of rights. —** Each facility must:

(1) Inform each resident, orally and in writing at the time of admission to the facility, of his legal rights during the stay at the facility.

(2) Make available to each resident, upon reasonable request, a written statement of such rights (which statement is updated upon changes in such rights).

(3) The written description of legal rights under this subsection shall include a description of the protection of personal funds and a statement that a resident may file a complaint with the licensing agency respecting resident abuse and neglect and misappropriation of resident property in the facility. A copy of the list of resident rights shall be conspicuously posted in the facility at all times.

**History.**

I.C., § 39-3317, as added by 1990, ch. 116, § 2, p. 239.

## STATUTORY NOTES

**Compiler's Notes.**

The words in parentheses so appeared in the law as enacted.

**39-3318. Facility response to incidents and complaints. —** (1) In addition to any other requirements of this chapter, the residential care or assisted living facility shall provide a procedure approved by the licensing agency for immediate response to incidents and complaints. This procedure shall include a method of assuring that the administrator or designee has personally investigated the matter, and that the person making the complaint or reporting the incident has received a response of action taken or a reason why no action needs to be taken. In the case of anonymous complaints, the administrator or designee shall document the action taken or a reason why no action needs to be taken.

(2) In order to assure the opportunity for complaints from the residents, the neighborhood, and the community to be made directly to the administrator or designee, each facility shall, within a reasonable period of time, meet with a complainant.

**History.**

I.C., § 39-3318, as added by 1990, ch. 116,

§ 2, p. 239; am. 2000, ch. 274, § 22, p. 799; am. 2005, ch. 280, § 15, p. 880.

**39-3319, 39-3320. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

The following sections were repealed by S.L. 2005, ch. 280, § 1:

39-3319. Access by advocates and representatives. [I.C., § 39-3319, as added by 1990, ch. 116, § 2, p. 239; am. 2000, ch. 274, § 23, p. 799.]

39-3320. Resident councils. [I.C., § 39-3320, as added by 1990, ch. 116, § 2, p. 239; am. 1996, ch. 207, § 14, p. 631; am. 2000, ch. 274, § 24, p. 799.]

**39-3321. Qualifications and requirements of administrator. —**  
Each residential care or assisted living facility must employ at least one (1) administrator licensed by the bureau of occupational licensing, which is responsible for licensing residential care facility administrators for the state of Idaho. Multiple facilities under one (1) administrator may be allowed by the department based on an approved plan of operation.

**History.**

I.C., § 39-3321, as added by 1990, ch. 116, § 2, p. 239; am. 1996, ch. 207, § 15, p. 631;

am. 2000, ch. 274, § 25, p. 799; am. 2003, ch. 201, § 1, p. 529; am. 2005, ch. 280, § 16, p. 880.

**STATUTORY NOTES**

**Cross References.**

Bureau of occupational licenses, § 67-2602.

**39-3322. Qualifications and requirements for facility staff. —**  
(1) Each facility must employ or arrange for sufficient trained staff to fully meet the needs of its residents and the requirements of this chapter. The facility shall have sufficient staff to provide care during all hours required in each resident's negotiated service plan. Additional staff may be required if physical plant and disability of residents indicate that staff assistance in emergencies is required. Benchmarks shall be established in the assessment criteria where the need for certified nursing assistants or licensed nurses is indicated. Residential care or assisted living facilities shall not retain residents who require the care provided by nursing facilities under section 39-1301(b), Idaho Code, other than for short exceptional stays pursuant to negotiated rulemaking as defined in chapter 52, title 67, Idaho Code.

(2) Should a residential care or assisted living facility choose not to carry professional liability insurance, that information shall be disclosed, in writing, to employees at the time of hiring.

**History.**

I.C., § 39-3322, as added by 1990, ch. 116, § 2, p. 239; am. 1996, ch. 207, § 16, p. 631;

am. 2000, ch. 274, § 26, p. 799; am. 2005, ch. 280, § 17, p. 880.



**39-3323. Training. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised I.C., § 39-3323, as added by 1990, ch. 116, § 2, p. 239,

was repealed by S.L. 1996, ch. 207, § 17, effective July 1, 1996.

**39-3324. Staff training.** — All employees of a residential care or assisted living facility shall receive orientation and continuing education pertinent to their job responsibilities.

**History.**

I.C., § 39-3324, as added by 1990, ch. 116, § 2, p. 239; am. 2000, ch. 274, § 27, p. 799; am. 2005, ch. 280, § 18, p. 880.

**39-3325. Requirements for location and physical environment of facilities.** — Licensed residential or assisted living facilities shall:

(1) Be located in geographical areas which are accessible to supportive services and are free from conditions which would pose a danger to the residents.

(2) Be maintained in such a manner as to be free from fire and/or safety hazards.

**History.**

I.C., § 39-3325, as added by 1990, ch. 116, § 2, p. 239; am. 2000, ch. 274, § 28, p. 799; am. 2005, ch. 280, § 19, p. 880.

**39-3326. Medications.** — The medication policy governed by the policy and procedure of the facility shall include a policy permitting, under the conditions specified, a licensed nurse to fill individual dose systems such as blister pack, mediset, or other system approved by the department. The policy shall provide for appropriate records to maintain security of medications received from a pharmacist in accordance with pharmacy standards. The licensed nurse shall appropriately label the medication with name, dosage, amount and time to be taken, and special instructions if appropriate.

**History.**

I.C., § 39-3326, as added by 2005, ch. 280, § 20, p. 880.

**39-3327 — 39-3329. [Reserved.]**

**39-3330. Advisory council.** — The department shall establish a state level advisory council consisting of twenty (20) members appointed by the organizations and/or agencies represented on the council. The chairman of the council shall be elected from the membership. The members of the council shall be determined by the bylaws of the council.

**History.**

I.C., § 39-3330, as added by 1990, ch. 116, § 2, p. 239; am. 1992, ch. 66, § 1, p. 200; am. 1993, ch. 373, § 7, p. 1345; am. 2000, ch. 274, § 29, p. 799; am. 2005, ch. 280, § 21, p. 880; am. 2011, ch. 123, § 1, p. 346.

STATUTORY NOTES

**Amendments.**

The 2011 amendment, by ch. 123, deleted the subsection (1) designation from the first paragraph; in the first sentence, substituted “twenty (20) members” for “twenty-two (22) members”; in the last sentence, substituted “shall be determined by the bylaws of the council” for “shall be.”; deleted former paragraphs (1)(a) through (1)(j), which were a

detailed listing of members of the council; and deleted former subsection (2), which read: “Members who are not state agency representatives shall serve three (3) year terms. A vacancy shall be filled for the remainder of the unexpired term from the same class of persons represented by the outgoing member.”

**39-3331. Powers and duties of the advisory council.** — The residential care or assisted living advisory council shall have the following powers and duties:

- (1) To make policy recommendations regarding the coordination of licensing and enforcement standards in residential care or assisted living facilities and the provision of services to residents of residential care or assisted living facilities.
- (2) To advise the agency during development and revision of rules.
- (3) To review and comment upon any proposed rules pertaining to residential care or assisted living.
- (4) To submit an annual report to the legislature stating opinions and recommendations which would further the state’s capability in addressing residential care or assisted living facility issues.

**History.**

I.C., § 39-3331, as added by 1990, ch. 116, § 2, p. 239; am. 1992, ch. 66, § 2, p. 200; am.

2000, ch. 274, § 30, p. 799; am. 2005, ch. 280, § 22, p. 880; am. 2011, ch. 123, § 2, p. 346.

STATUTORY NOTES

**Amendments.**

The 2011 amendment, by ch. 123, added

“pertaining to residential care or assisted living” in subsection (3).

**39-3332. Meetings.** — The residential care or assisted living advisory council shall meet as necessary but not less than four (4) times a year. Meetings of the council shall be open to the public. The department shall provide:

- (1) Staff necessary to assist the council in performing its duties.
- (2) Space for meetings of the council.
- (3) Accommodations for alternative meeting formats.

**History.**

I.C., § 39-3332, as added by 1990, ch. 116,

§ 2, p. 239; am. 2005, ch. 280, § 23, p. 880; am. 2011, ch. 123, § 3, p. 346.

STATUTORY NOTES

**Amendments.**

The 2011 amendment, by ch. 123, added subsection (3).

**39-3333. Reimbursement of expenses.** — Members of the residential care and assisted living advisory council shall be reimbursed by the

department for their actual expenses incurred in the performance of their duties, not to exceed the limits set forth in the state travel guidelines.

**History.**

I.C., § 39-3333, as added by 1990, ch. 116, § 2, p. 239; am. 2005, ch. 280, § 24, p. 880.

**39-3334 — 39-3339. [Reserved.]**

**39-3340. Licensing.** — (1) Any person, firm, partnership, association, governmental unit, or corporation within the state proposing to operate, establish, manage, conduct, or maintain a residential care or assisted living facility in the state shall have a license issued by the licensing agency of the department. A license is not transferable. The owner of the license has ultimate responsibility for the operation of the facility.

(2) Each residential care or assisted living facility in the state requires an administrator, properly licensed by the bureau of occupational licensing, who is responsible for the day-to-day operation of the facility.

(3) A license is not transferable from one (1) individual to another, from one (1) business entity to another, or from one (1) location to another. When a change of operator, ownership, lease or location occurs, the facility shall be relicensed, and the operator shall follow the application procedures, and obtain a license, before commencing operation as a facility. When there is a significant change in an owner's share of the facility, but which does not alter the overall ownership or operation of the business, that change shall be communicated to the licensing agency within sixty (60) days of the effective date of the change. When the owner contracts the operation to a facility management company, other than for temporary management, it shall be treated as a change of operator.

**History.**

I.C., § 39-3340, as added by 1990, ch. 116, § 2, p. 239; am. 1993, ch. 373, § 8, p. 1345;

am. 2000, ch. 274, § 31, p. 799; am. 2005, ch. 280, § 25, p. 880.

**STATUTORY NOTES**

**Cross References.**

Bureau of occupational licenses, § 67-2602.

**39-3341 — 39-3344. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

The following sections were repealed by S.L. 2005, ch. 280, § 1:

39-3341. Initial application and issuance of a license. [I.C., § 39-3341, as added by 1990, ch. 116, § 2, p. 239; am. 2000, ch. 274, § 32, p. 799.]

39-3342. Application. [I.C., § 39-3342, as

added by 1990, ch. 116, § 2, p. 239; am. 1993, ch. 373, § 9, p. 1345; am. 2000, ch. 274, § 33, p. 799.]

39-3343. Temporary license. [I.C., § 39-3343, as added by 1990, ch. 116, § 2, p. 239.]

39-3344. Renewal of a license. [I.C., § 39-3344, as added by 1990, ch. 116, § 2, p. 239.]

**39-3345. Denial or revocation of a license.** — The licensing agency



may deny the issuance of a license or revoke any license when persuaded by a preponderance of evidence that such conditions exist as to endanger the health or safety of residents, or when the facility is not in substantial compliance with the provisions of this chapter or the rules promulgated pursuant to this chapter.

**History.** § 2, p. 239; am. 2000, ch. 274, § 34, p. 799; I.C., § 39-3345, as added by 1990, ch. 116, am. 2005, ch. 280, § 26, p. 880.

**39-3346 — 33-3348. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.** 39-3347. Effect of previous revocation or denial of a license. [I.C., § 39-3347, as added by 1990, ch. 116, § 2, p. 239.]  
 The following sections were repealed by S.L. 2005, ch. 280, § 1:  
 39-3346. Procedure for denial or revocation of a license [I.C., § 39-3346, as added by 1990, ch. 116, § 2, p. 239.]  
 39-3348. Rules provided. [I.C., § 39-3348, as added by 1990, ch. 116, § 2, p. 239; am. 2000, ch. 274, § 35, p. 799.]

**39-3349. Responsibility for inspections and technical assistance.**  
 — The licensing agency shall inspect and provide technical assistance to residential care or assisted living facilities. The department may provide consulting services upon request to any residential care or assisted living facility to assist in the identification or correction of deficiencies and in the upgrading of the quality of care provided by the facility.

**History.** § 2, p. 239; am. 2000, ch. 274, § 36, p. 799; I.C., § 39-3349, as added by 1990, ch. 116, am. 2005, ch. 280, § 27, p. 880.

**39-3350. Consulting services. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.** am. 2000, ch. 274, § 37, p. 799, was repealed by S.L. 2005, ch. 280, § 1.  
 This section, which comprised I.C., § 39-3350, as added by 1990, ch. 116, § 2, p. 239;

**39-3351. Exemptions.** — The provisions of this chapter do not apply to any of the following:

- (1) Any health facility as defined by chapter 13, title 39, Idaho Code.
- (2) Any house, institution, hotel, congregate housing project, retirement home or other similar place that is limited to providing one (1) or more of the following: housing, meals, transportation, housekeeping, or recreational and social activities; or that has residents accessing supportive services from an entity approved to provide such services in Idaho and holding no legal ownership interest in the entity operating the facility.
- (3) Any arrangement for the receiving and care of persons by a relative.
- (4) Any similar facility determined by the director.

**History.** § 2, p. 239; am. 1996, ch. 207, § 18, p. 631; I.C., § 39-3351, as added by 1990, ch. 116, am. 2005, ch. 280, § 28, p. 880.

**39-3352. Unlicensed residential care or assisted living facilities.**

— (1) No unlicensed residential care or assisted living facility shall operate in this state.

(2) A facility shall be deemed to be an “unlicensed residential care or assisted living facility” and “maintained and operated to provide services” if it is unlicensed and not exempt from licensure, and any one (1) of the following conditions is satisfied:

(a) The facility is, or is held out as or represented as, providing care, supervision and services.

(b) The facility accepts or retains residents who demonstrate the need for care, supervision, and services, as defined in this chapter or the rules adopted pursuant to this chapter.

(3) Upon discovery of an unlicensed residential care or assisted living facility, the department shall refer residents to the appropriate placement or adult protective services agency if either of the following conditions exist:

(a) There is an immediate threat to the resident's health and safety.

(b) The facility will not cooperate with the licensing agency to apply for a license, meet licensing standards, and obtain a valid license.

(4) A person found to be operating a residential care or assisted living facility without a license shall be guilty of a misdemeanor punishable by imprisonment in a county jail not to exceed six (6) months, or by a fine not to exceed five thousand dollars (\$5,000).

(5) In the event the county attorney in the county where the alleged violation occurred fails or refuses to act within thirty (30) days of notification of the violation, the attorney general is authorized to prosecute violations under the provisions of this section.

**History.**

I.C., § 39-3352, as added by 1990, ch. 116,  
§ 2, p. 239; am. 1993, ch. 373, § 10, p. 1345;

am. 2000, ch. 274, § 38, p. 799; am. 2005, ch.  
280, § 29, p. 880.

**STATUTORY NOTES****Cross References.**

Attorney general, § 67-1401 et seq.

**39-3353. Placement of persons into an unlicensed residential or assisted living facility. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised I.C., § 39-3353, as added by 1990, ch. 116, § 2, p. 239;

am. 1996, ch. 207, § 19, p. 631; am. 2000, ch. 274, § 39, p. 799, was repealed by S.L. 2005, ch. 280, § 1.

**39-3354. Waiver or variance.** — The board shall provide by rule a procedure whereby a temporary variance or a permanent waiver of a specific standard may be granted in the event that good cause is shown for such a variance or waiver and providing that a variance or waiver of a standard does not endanger the health and safety of any resident. The decision to

grant a variance or waiver shall not be considered as precedent or be given any force or effect in any other proceeding.

**History.**

I.C., § 39-3354, as added by 1990, ch. 116,  
§ 2, p. 239; am. 2005, ch. 280, § 30, p. 880.

**39-3354A. Special waiver permitted.** — The department may grant a special waiver of the requirement for licensure as a residential care or assisted living facility when it is deemed in the best interests of individuals and with due consideration of the following criteria:

(1) The individuals are residents of a facility operated by a nonprofit health care and/or housing organization established as such in the state of Idaho and satisfying the requirements of U.S. Internal Revenue Code section 501(c) as a nonprofit;

(2) The support services required by the individuals are furnished by an entity approved to provide such services in the state of Idaho in good standing as demonstrated by routine inspections required for the type of entity providing services;

(3) Facilities seeking such waivers and providing meal service shall be inspected and licensed as a food service establishment by the district health department unless the meal service is provided by a kitchen already part of a facility licensed by the department;

(4) The costs of obtaining the needed services from another source are significantly greater and/or would pose a significant hardship on these individuals.

Any waiver granted under this section shall be reviewed annually and is subject to inspection by the department to ensure safety and sanitation.

**History.**

I.C., § 39-3354A, as added by 1998, ch. 188, § 1, p. 683; am. 2000, ch. 274, § 40, p. 799;  
am. 2005, ch. 280, § 31, p. 880.

**STATUTORY NOTES**

**Federal References.**

Section 501(c) of the U.S. Internal Revenue Code, referred to in subsection (1), is codified at 26 USCS § 501(c).

**39-3355. Inspections.** — (1) The licensing agency shall cause to be made such inspections and investigations to determine compliance with this chapter and applicable rules.

(2) Inspections for such purposes will be made unannounced and without prior notice at the discretion of the department and at intervals determined by the licensing agency.

(3) An inspector shall have full access and authority to examine, among other things, quality of care and service delivery, a facility's records, resident accounts, physical premises, including buildings, grounds and equipment, and any other areas necessary to determine compliance with this chapter and applicable rules.

(4) An inspector shall have authority to interview the licensee, administrator, staff and residents. Interviews with residents shall be confidential and conducted privately unless otherwise specified by the resident.



(5) The licensing agency shall notify the facility, in writing, of all deficiencies and shall approve a reasonable length of time for compliance by the facility.

(6) Current lists of deficiencies, including plans of correction, shall be available to the public upon request in the individual facilities or by written request to the department.

**History.**

I.C., § 39-3355, as added by 1990, ch. 116, am. 2000, ch. 274, § 41, p. 799; am. 2005, ch. 280, § 32, p. 880.  
§ 2, p. 239; am. 1996, ch. 207, § 20, p. 631;

**39-3356. Complaints.** — (1) A person who believes that any provision of this chapter has been violated may file a complaint with the licensing agency.

(2) The licensing agency shall investigate, or cause to be investigated, any complaint alleging a violation of this chapter or applicable rules, regulations and standards. If the licensing agency reasonably believes a requirement of this chapter has been violated, it shall conduct an inspection of the facility.

(3) A complaint filed with the licensing agency which is subsequently released to the facility that is the subject of the complaint or to any member of the public shall not disclose the name or identifying characteristics of the complainant unless:

(a) The complainant consents in writing to the disclosure.

(b) The investigation results in a judicial proceeding and disclosure is ordered by the court.

(c) If the disclosure is essential to the investigation, the complainant shall be given an opportunity to withdraw the complaint before disclosure.

(4) The licensing agency shall inform the complainant or, if requested by the complainant, the complainant's designated representative, of the results of the investigation and any action taken by the agency.

**History.**

I.C., § 39-3356, as added by 1990, ch. 116,  
§ 2, p. 239.

**39-3357. Enforcement process.** — (1) If the licensing agency finds, on the basis of inspections as defined in this chapter or otherwise, that a residential or assisted living facility no longer meets a requirement of this chapter, and further finds that the facility's deficiencies:

(a) Immediately jeopardize the health or safety of its residents, the department shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in section 39-3358(1)(c), Idaho Code, or prohibit the facility from keeping or admitting residents and may provide, in addition, for one (1) or more of the other remedies described in section 39-3358, Idaho Code.

(b) Do not immediately jeopardize the health or safety of its residents, the department shall provide for one (1) or more of the remedies described in section 39-3358, Idaho Code.

(2) Nothing in this section shall be construed as restricting the remedies available to the department to remedy a facility's deficiencies. If the

department finds that a facility meets the requirements of this chapter, but, as of a previous period, intentionally did not meet such requirements, the department may provide for a civil money penalty under section 39-3358(1)(b), Idaho Code, for the days in which it finds that the facility was not in compliance with such requirements.

**History.**

I.C., § 39-3357, as added by 1990, ch. 116,  
§ 2, p. 239; am. 2000, ch. 274, § 42, p. 799.

**39-3358. Specified remedies.** — (1) The department shall establish at least the following remedies:

(a) Prohibit the facility from admitting residents or prohibit a facility from keeping or admitting residents with a specific diagnosis.

(b) A civil money penalty assessed and collected, with interest, for each day the facility is or was out of compliance with a requirement of this chapter. Funds collected by the department as a result of imposition of such a penalty shall be applied to the protection of the health or property of residents of residential or assisted living facilities that the department finds deficient, including payment for the costs of relocation of residents to other facilities, maintenance of operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.

(c) The appointment of temporary management to oversee the operation of the facility and to assure the health and safety of the facility's residents, where there is a need for temporary management while:

(i) There is an orderly closure of the facility.

(ii) Improvements are made in order to bring the facility into compliance with all the requirements of this chapter.

(iii) The temporary management under this clause shall not be terminated until the department has determined that the facility has the management capability to ensure continued compliance with all the requirements of this chapter.

(d) The authority, in the case of an emergency, to summarily suspend the license, to close the facility, and/or to transfer residents in that facility to other facilities.

(2) The department shall also specify criteria as to when and how each of such remedies is to be applied, the amounts of any fines, and the severity of each of these remedies, to be used in the imposition of such remedies. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the remedies and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies.

**History.**

I.C., § 39-3358, as added by 1990, ch. 116,  
§ 2, p. 239; am. 2000, ch. 274, § 43, p. 799.

**39-3359. Transfer of residents. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised I.C., § 39-3359, as added by 1990, ch. 116, § 2, p. 239;

am. 2000, ch. 274, § 44, p. 799, was repealed by S.L. 2005, ch. 280, § 1.

**39-3360 — 39-3369. [Reserved.]****39-3370 — 39-3389. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

The following sections were repealed by S.L. 2005, ch. 280, § 1:

39-3370. Purpose of certified family homes. [I.C., § 39-3370, as added by 1990, ch. 116, § 2, p. 239; am. 2000, ch. 274, § 45, p. 799.]

39-3371. Rules. [I.C., § 39-3371, as added by 1990, ch. 116, § 2, p. 239; am. 1993, ch. 373, § 11, p. 1345; am. 2000, ch. 274, § 46, p. 799; am. 2003, ch. 201, § 2, p. 529.]

39-3372. Application for certification. [I.C., § 39-3372, as added by 1990, ch. 116, § 2, p. 239; am. 2000, ch. 274, § 47, p. 799; am. 2000, ch. 469, § 96, p. 1450.]

39-3373. Issuance and renewal of certification. [I.C., § 39-3373, as added by 1990, ch. 116, § 2, p. 239; am. 2000, ch. 274, § 48, p. 799.]

39-3374. Temporary certification. [I.C., § 39-3374, as added by 1990, ch. 116, § 2, p. 239; am. 2000, ch. 274, § 49, p. 799.]

39-3375. Denial or revocation of a certificate. [I.C., § 39-3375, as added by 1990, ch. 116, § 2, p. 239; am. 2000, ch. 274, § 50, p. 799.]

39-3376. Procedure for denial or revocation of a certificate. [I.C., § 39-3376, as added by 1990, ch. 116, § 2, p. 239.]

39-3377. Effect of previous revocation or denial of a certificate. [I.C., § 39-3377, as added by 1990, ch. 116, § 2, p. 239.]

39-3378. Rules provided. [I.C., § 39-3378, as added by 1990, ch. 116, § 2, p. 239; am. 2000, ch. 274, § 51, p. 799.]

39-3379. Mandatory inspections. [I.C., § 39-3379, as added by 1990, ch. 116, § 2, p. 239; am. 2000, ch. 274, § 52, p. 799.]

39-3380. Enforcement processes. [I.C., § 39-3380, as added by 1990, ch. 116, § 2, p. 239; am. 2000, ch. 274, § 53, p. 799.]

39-3381. Operating without certification — Misdemeanor. [I.C., § 39-3381, as added by 1990, ch. 116, § 2, p. 239; am. 2000, ch. 274, § 54, p. 799.]

39-3382. Placement of persons into an unlicensed certified family home. [I.C., § 39-3382, as added by 1990, ch. 116, § 2, p. 239; am. 2000, ch. 274, § 55, p. 799.]

39-3383. Negotiated service agreement. [I.C., § 39-3383, as added by 1990, ch. 116, § 2, p. 239; am. 1996, ch. 207, § 21, p. 631; am. 2000, ch. 274, § 56, p. 799.]

39-3384. Physician's order for certified family homes. [I.C., § 39-3384, as added by 1990, ch. 116, § 2, p. 239; am. 2000, ch. 274, § 57, p. 799.]

39-3385. Written service plan. [I.C., § 39-3385, as added by 1990, ch. 116, § 2, p. 239; am. 1996, ch. 207, § 22, p. 631; am. 2000, ch. 274, § 58, p. 799.]

39-3386. Care agreements. [I.C., § 39-3386, as added by 1990, ch. 116, § 2, p. 239; am. 2000, ch. 274, § 59, p. 799.]

39-3387. Resident rights. [I.C., § 39-3387, as added by 1990, ch. 116, § 2, p. 239; am. 2000, ch. 274, § 60, p. 799.]

39-3388. Training. [I.C., § 39-3388, as added by 1990, ch. 116, § 2, p. 239; am. 2000, ch. 274, § 61, p. 799.]

39-3389. Physical and environmental standards. [I.C., § 39-3389, as added by 1990, ch. 116, § 2, p. 239; am. 2000, ch. 274, § 62, p. 799.]



**39-3390, 39-3391. [Reserved.]**

**39-3392, 33-3393. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

The following sections were repealed by S.L. 2005, ch. 280, § 1:

39-3392. Separability. [I.C., § 39-3392, as added by 1990, ch. 116, § 2, p. 239.]

39-3393. Application of provisions. [I.C., § 39-3393, as added by 1996, ch. 207, § 23, p. 631; am. 2000, ch. 274, § 63, p. 799.]

**CHAPTER 34**

**REVISED UNIFORM ANATOMICAL GIFT ACT**

**SECTION.**

39-3401. Short title.

39-3401A. Storage and transport of human bodies or body parts — Duties of state department of health and welfare — Enforcement and penalties.

39-3402. Definitions.

39-3403. Applicability.

39-3404. Who may make anatomical gift before donor's death.

39-3405. Manner of making anatomical gift before donor's death.

39-3406. Amending or revoking anatomical gift before donor's death.

39-3407. Refusal to make anatomical gift — Effect of refusal.

39-3408. Preclusive effect of anatomical gift, amendment or revocation.

39-3409. Who may make anatomical gift of decedent's body or part.

39-3410. Manner of making, amending or revoking anatomical gift of decedent's body or part.

39-3411. Requirements for informed consent.

39-3412. Persons that may receive anatomical gift — Purpose of anatomical gift.

**SECTION.**

39-3413. Search and notification.

39-3414. Delivery of document of gift not required — Right to examine.

39-3415. Rights and duties of procurement organization and others.

39-3416. Coordination of procurement and use.

39-3417. Sale or purchase of parts prohibited.

39-3418. Other prohibited acts.

39-3419. Immunity.

39-3420. Law governing validity — Choice of law as to execution of document of gift — Presumption of validity.

39-3421. Donor registry.

39-3422. Effect of anatomical gift on advance health care directive.

39-3423. Cooperation between coroner and procurement organization.

39-3424. Uniformity of application and construction.

39-3425. Relation to electronic signatures in global and national commerce act.

**OFFICIAL COMMENT**

**PREFATORY NOTE**

As of January, 2006 there were over 92,000 individuals on the waiting list for organ transplantation, and the list keeps growing. It is estimated that approximately 5,000 individuals join the waiting list each year. See "Organ Donation: Opportunities for Action," Institute of Medicine of the National Academies (2006) [www.nap.edu](http://www.nap.edu). Every hour another person in the United States dies because of the lack of an organ to provide a life saving organ transplant.

The lack of organs results from the lack of

organ donors. For example, according to the Scientific Registry of Transplant Recipients in 2005 when there were about 90,000 people on the organ transplant waiting list, there were 13,091 individuals who died under the age of 70 using cardiac and brain death criteria and who were eligible to be organ donors. Of these, only 58% or 7,593 were actual donors who provided just over 23,000 organs. Living donors, primarily of kidneys, contributed about 6,800 more organs. Between them about 28,000 organs were transplanted into patients on the waiting list in 2005. (See [www.optn.org](http://www.optn.org)).

The 2005 data on cadaveric organ donors suggests there were 5,498 individuals who died that year that could have been donors who weren't and that had they been organ donors there would have been approximately 17,000 additional organs potentially available for transplantation. (See generally, [www.unos.org](http://www.unos.org) and [www.ustransplant.org](http://www.ustransplant.org)). However, these numbers to some extent are only estimates. First, they exclude individuals dying over the age of 70. Second, the data are self reported for eligible donors. Indicative of the absence of precision in this area is the report from the Institute of Medicine (IOM). According to the IOM, it has been estimated that donor-eligible deaths range between 10,500 and 16,800 per year. See "Organ Donation: Opportunities for Action," Institute of Medicine of the National Academies (2006) at page 27. [www.nap.edu](http://www.nap.edu) Using the 2005 figures for deceased organ donors, this would suggest that between approximately 3,000 and 9,000 decedents could have been donors but weren't. Further, if one assumes an average of three solid organs recovered from each of them, there could be between 9,000 and 27,000 more organs that might have been available to transplant into individuals on the waiting list.

The data for eye and tissue is, however, more encouraging. On an annual basis there are approximately 50,000 eye donors and tissue donors and over 1,000,000 ocular and tissue transplants.

This Revised Uniform Anatomical Gift Act ("UAGA") is promulgated by the National Conference of Commissioners on Uniform State Laws ("NCCUSL") to address in part the critical organ shortage by providing additional ways for making organ, eye, and tissue donations. The original UAGA was promulgated by NCCUSL in 1968 and promptly enacted by all states. In 1987, the UAGA was revised and updated, but only 26 states adopted that version. Since 1987, many states have adopted non-uniform amendments to their anatomical gift acts. The law among the various states is no longer uniform and harmonious, and the diversity of law is an impediment to transplantation. Furthermore the federal government has been increasingly active in the organ transplant process.

Since 1987, there also have been substantial improvements in the technology and practice of organ, eye, and tissue transplantation and therapy. And, the need for organs, eyes, and tissue for research and education has increased to assure more successful transplantations and therapies. The improvements in technology and the growing needs of the research community have correspondingly increased the need for more donors.

This 2006 Revised UAGA is promulgated with the substantial and active participation of the major stakeholders representing do-

nors, recipients, doctors, procurement organizations, regulators, and others affected. The Drafting Committee held four meetings with the stakeholders beginning on Friday morning and ending Sunday noon, reading and discussing each section of the drafts word by word (Chicago, December 3-5, 2004; Philadelphia, March 18-20, 2005; Chicago, November 2-4, 2005; and Detroit, April 21-23, 2006). The following stakeholders were actively engaged in the dialogue working for a consensus that could and should be adopted on a uniform basis to facilitate the anatomical gifts of human bodies and parts: American Bar Association, American Medical Association, American Lung Association, Association of Organ Procurement Organizations, American Association of Tissue Banks, Eye Bank Association of America, Health Law Institute and Center for Race and Bioethics, Life Alaska Donor Services, Musculoskeletal Transplant Foundation, National Association of Medical Examiners, National Disease Research Interchange, National Kidney Foundation, North American Transplant Coordinators Organization, RTI Donor Services, United Network for Organ Sharing (UNOS) and United States Department of Health & Human Services. In addition, there were many who contributed their views and comments by correspondence, including the Funeral Consumers Alliance, Inc. and Funeral Ethics Organization.

This [act] adheres to the significant policy determinations reflected in existing anatomical gift acts. First, the [act] is designed to encourage the making of anatomical gifts. Second, the [act] is designed to honor and respect the autonomy interest of individuals to make or not to make an anatomical gift of their body or parts. Third, the [act] preserves the current anatomical gift system founded upon altruism by requiring a positive affirmation of an intent to make a gift and prohibiting the sale and purchase of organs. This [act] includes a number of provisions, discussed below, that enhance these policies.

### History of 1968 and 1987 Acts

The first reported medical transplant occurred in the third century. However, medical miracles flowing from transplants are truly a modern story beginning in the first decade of the twentieth century with the first successful transplant of a cornea. But, not until three events occurred in the twentieth century, in addition to the development of surgical techniques to effectuate a transplant, could transplants become a viable option to save and meaningfully extend lives.

The first event was the development in the late 1960s of the first set of neurological criteria for determining death. These criteria allowed persons to be declared dead upon the cessation of all brain activity. Ultimately these criteria, together with the historic mea-



sure of determining death by cessation of circulation and respiration, were incorporated into Section 1 of the Uniform Determination of Death Act providing that: "An individual who has sustained either (1) irreversible cessation of circulatory and respiratory function, or (2) irreversible cessation of all functions of the entire brain, including the brain stem, is dead."

The second event, following shortly after Dr. Christian Barnard's successful transplant of a heart in November, 1967, was this Conference's adoption of the first Uniform Anatomical Gift Act. In short order, every jurisdiction uniformly adopted the 1968 Act. The most significant contribution of the 1968 Act was to create a right to donate organs, eyes, and tissue. This right was not clearly recognized at common law. By creating this right, individuals became empowered to donate their parts or their loved one's parts to save or improve the lives of others.

The last event was the development of immunosuppressive drugs that prevented organ recipients from rejecting transplanted organs. This permitted many more successful organ transplants, thus contributing to the rapid growth in the demand for organs and the need for changes in the law to facilitate the making of anatomical gifts.

In 1987, a revised Uniform Anatomical Gift Act was promulgated to address changes in circumstances and in practice. Only 26 jurisdictions enacted the 1987 revision. Consequently, there is significant non-uniformity between states with the 1968 Act and those with the 1987 revisions. Neither of those acts comports with changes in federal law adopted subsequent to the 1987 Act relating to the role of hospitals and procurement organization in securing organs, eyes, and tissues for transplantation. And, both of them have impediments that are inconsistent with a policy to encourage donation.

The two previous anatomical gift acts, as well as this [act], adhere to an "opt in" principle as its default rule. Thus, an individual becomes a donor only if the donor or someone acting on the donor's behalf affirmatively makes an anatomical gift. The system universally adopted in this country is contrary to the system adopted in some countries, primarily in Europe, where an individual is deemed to be a donor unless the individual or another person acting on the individual's behalf "opts out." This other system is known as "presumed consent." While there are proponents of presumed consent who believe the concept of presumed consent could receive in the future a favorable reception in this country, the professional consensus appears to be not to replace the present opt-in principle at this time. See "Organ Donation: Opportunities in Action," Institute of Medicine of the National Academies (2006) at page 12.

### Scope of the 2006 Revised Act

This [act] is limited in scope to donations from deceased donors as a result of gifts made before or after their deaths. Although recently there has been a significant increase in so-called "living donations," where a living donor immediately donates an organ (typically a kidney or a section of a liver) to a recipient, donations by living donors are not covered in this [act] because they raise distinct and difficult legal issues that are more appropriate for a separate act.

A majority of donors or prospective donors are candidates for donation of eyes or tissue, but only a small percentage of individuals die under circumstances that permit an anatomical gift of an organ. To procure an anatomical gift for transplantation, therapy, research, or education, a donor or prospective donor must be declared dead (*see* Uniform Determination of Death Act). In cases of potential organ donation, measures necessary to ensure the medical suitability of an organ for transplantation or therapy are administered to a patient who is dead or near death to determine if the patient could be a prospective donor.

Pursuant to federal law, when a donor or a patient who could be a prospective donor is dead or near death, a procurement organization, or a designee, must be notified. The organization begins to develop a medical and social history to determine whether the dying or deceased individual's body might be medically suitable for donation. If the body of a dying or deceased person might be medically suitable for donation, the procurement organization checks for evidence of a donation, if not otherwise known, and seeks consent to donation from authorized persons, if necessary. In the case of an organ, the organ procurement organization obtains from the Organ Procurement and Transplantation Network ("OPTN") a prioritized list of potential recipients from the national organ waiting list and takes the necessary steps to see that the organ finds its way to the appropriate recipient. If eye or tissue is donated, the appropriate procurement organization procures the eye or tissue and takes the necessary steps to screen, test, process, store, or distribute them as required for transplantation, therapy, research, or education. All must be done expeditiously.

Recent technological innovations have increased the types of organs that can be transplanted, the demand for organs, and the range of individuals who can donate or receive an organ, thereby increasing the number of organs available each year and the number of transplantations that occur each year. Nonetheless, the number of deaths for lack of available organs also has increased. While the Commissioners are under no illusion that any anatomical gift act can fully



satisfy the need for organs, any change that could increase the supply of organs and thus save lies is an improvement.

Transplantation occurs across state boundaries and requires speed and efficiency if the organ is to be successfully transplanted into a recipient. There simply is no time for researching and conforming to variations of the laws among the states. Thus, uniformity of state law is highly desirable. Furthermore, the decision to be a donor is a highly personal decision of great generosity and deserves the highest respect from the law. Because current state anatomical gift laws are out of harmony with both federal procurement and allocation policies and do not fully respect the autonomy interests of donors, there is a need to harmonize state law with federal policy as well as to improve the manner in which anatomical gifts can be made and respected.

### **Summary of the Changes in the Revised Act**

This revision retains the basic policy of the 1968 and 1987 anatomical gift acts by retaining and strengthening the "opt-in" system that honors the free choice of an individual to donate the individual's organ (a process known in the organ transplant community as "first person consent" or "donor designation"). This revision also preserves the right of other persons to make an anatomical gift of a decedent's organs if the decedent had not made a gift during life. And, it strengthens the right of an individual not to donate the individual's organs by signing a refusal that also bars others from making a gift of the individual's organs after the individual's death. This revision:

1. Honors the choice of an individual to be or not to be a donor and strengthens the language barring others from overriding a donor's decision to make an anatomical gift (Section 8 [§ 39-3408]);

2. Facilitates donations by expanding the list of those who may make an anatomical gift for another individual during that individual's lifetime to include health-care agents and, under certain circumstances, parents or guardians (Section 4 [§ 39-3404]);

3. Empowers a minor eligible under other law to apply for a driver's license to be a donor (Section 4 [§ 39-3404]);

4. Facilitates donations from a deceased individual who made no lifetime choice, by adding to the list of persons who can make a gift of the deceased individual's body or parts the following persons: the person who was acting as the decedent's agent under a power of attorney for health care at the time of the decedent's death, the decedent's adult grandchildren, and an adult who exhibited special care and concern for the decedent (Section 9 [§ 39-3409]) and defines the meaning of "reasonably available" which is relevant to who

can make an anatomical gift of a decedent's body or parts (Section 2(23) [§ 39-3402(23)]);

5. Permits an anatomical gift by any member of a class where there is more than one person in the class so long as no objections by other class members are known and, if an objection is known, permits a majority of the members of the class who are reasonably available to make the gift without having to take account of a known objection by any class member who is not reasonably available (Section 9 [§ 39-3409]);

6. Creates numerous default rules for the interpretation of a document of gift that lacks specificity regarding either the persons to receive the gift or the purposes of the gift or both (Section 11 [§ 39-3412]);

7. Encourages and establishes standards for donor registries (Section 20 [§ 39-3421]);

8. Enables procurement organizations to gain access to documents of gifts in donor registries, medical records, and the records of a state motor vehicle department (Sections 14 [§ 39-3415] and 20 [§ 39-3421]);

9. Resolves the tension between a health-care directive requesting the withholding or withdrawal of life support systems and anatomical gifts by permitting measures necessary to ensure the medical suitability of organs for intended transplantation or therapy to be administered (Sections 14 [§ 39-3415] and 21 [§ 39-3422]);

10. Clarifies and expands the rules relating to cooperation and coordination between procurement organizations and coroners or medical examiners (Sections 22 [§ 39-3423] and 23 [not adopted in Idaho]);

11. Recognizes anatomical gifts made under the laws of other jurisdictions (Section 19 [§ 39-3420]); and

12. Updates the [act] to allow for electronic records and signatures (Section 25 [§ 39-3425]).

In addition, Section 2 [§ 39-3402] provides a number of new definitions that are used in the substantive provisions of the [act] to clarify and expand the opportunities for anatomical gifts. These include: adult, agent, custodian, disinterested witness, donee, donor registry, driver's license, eye bank, guardian, know, license, minor, organ procurement organization, parent, prospective donor, reasonably available, recipient, record, sign, tissue, tissue bank, and transplant hospital.

Section 4 [§ 39-3404] authorizes individuals to make anatomical gifts of their bodies or parts. It also permits certain persons, other than donors, to make an anatomical gift on behalf of a donor during the donor's lifetime. The expanded list includes agents acting under a health-care power of attorney or other record, parents of unemancipated minors, and guardians. The section also recognizes that it is appropriate that minors who can apply for a driver's license be empowered to

make anatomical gifts, but, under Section 8(g) [§ 39-3408(7)], either parent can revoke the gift if the minor dies under the age of 18.

Section 5 [§ 39-3405] recognizes that, since the adoption of the previous versions of this [act], some states and many private organizations have created donor registries for the purpose of making anatomical gifts. Thus, in addition to evidencing a gift on a donor card or driver's license, this [act] allows for the making of anatomical gifts on donor registries. It also permits gifts to be made on state-issued identification cards and, under limited circumstances, to be made orally. Except for oral gifts, there is no witnessing requirement to make an anatomical gift.

Section 6 [§ 39-3406] permits anatomical gifts to be amended or revoked by the execution of a later-executed record or by inconsistent documents of gifts. It also permits revocation by destruction of a document of gift and, under limited circumstances, permits oral revocations.

Section 7 [§ 39-3407] permits an individual to sign a refusal that bars all other persons from making an anatomical gift of the individual's body or parts. A refusal generally can be made by a signed record, a will, or, under limited circumstances, orally. By permitting refusals, this [act] recognizes the autonomy interest of an individual either to be or not to be a donor. The section also recognizes that a refusal can be revoked.

Section 8 [§ 39-3408] substantially strengthens the respect due a decision to make an anatomical gift. While the 1987 Act provided that a donor's anatomical gift was irrevocable (except by the donor), until quite recently it had been a common practice for procurement organizations to seek affirmation of the gift from the donor's family. This could result in unnecessary delays in the recovery of organs as well as a reversal of a donor's donation decision. Section 8 [§ 39-3408] intentionally disempowers families from making or revoking anatomical gifts in contravention of a donor's wishes. Thus, under the strengthened language of this [act], if a donor had made an anatomical gift, there is no reason to seek consent from the donor's family as they have no right to give it legally. See Section 8(a) [§ 39-3408(1)]. Of course, that would not bar, nor should it bar, a procurement organization from advising the donor's family of the donor's express wishes, but that conversation should focus more on what procedures will be followed to carry out the donor's wishes and on answering a family's questions about the process rather than on seeking approval of the donation. A limited exception applies if the donor is a minor at the time of death. In this case, either parent may amend or revoke the donor's anatomical gift. See Section 8(g) [§ 39-3408(7)].

Section 8 [§ 39-3408] also recognizes that some decisions of a donor are inherently am-

biguous, making it appropriate to adopt rules that favor the making of anatomical gifts. For example, a donor's revocation of a gift of a part is not to be construed as a refusal for others to make gifts of other parts. Likewise, a donor's gift of one part is not to be construed as a refusal that would bar others from making gifts of other parts absent an express, contrary intent.

Section 9 [§ 39-3409] sets forth a prioritized list of classes of persons who can make an anatomical gift of a decedent's body or part if the decedent was neither a donor nor had signed a refusal. The list is more expansive than under previous versions of this [act]. It includes persons acting as agents at the decedent's death, adult grandchildren, and close friends.

Section 10 [§ 39-3410] deals with the manner of making, amending, or revoking an anatomical gift following the decedent's death.

Section 11 [§ 39-3412] deals with the passing of parts to named persons and more generally to eye banks, tissue banks, and organ procurement organizations. In part, the section is designed to harmonize this [act] with federal law, particularly with respect to organs donated for transplantation or therapy. The National Organ Transplant Act created the Organ Procurement and Transplantation Network ("OPTN") to facilitate the nationwide, equitable distribution of organs. Currently, United Network Organ Sharing ("UNOS") operates the OPTN under contract with the U.S. Department of Health and Human Services. When an organ donor dies, the donor's organs, barring the rare instance of a donation to a named individual, are recovered by the organ procurement organization for the service area in which the donor dies, as custodian of the organs, to be allocated by it either locally, regionally, or nationally in accordance with allocation policies established by the OPTN.

Section 11 [§ 39-3412] includes two important improvements to previous versions of this [act]. First, it creates a priority for transplantation or therapy over research or education when an anatomical gift is made for all four purposes in a document of gift that fails to establish a priority.

Second, it specifies the person to whom a part passes when the document of gift merely expresses a "general intent" to be an "organ donor." This type of general designation is common on a driver's license. Under Section 11(f) [§ 39-3412(6)] a general statement of intent to be a donor results only in an anatomical gift of the donor's eyes, tissues, and organs (not the whole body) for transplantation or therapy. Since a general statement of intent to be an organ donor does not result in the making of an anatomical gift of the whole body, or any part, for research or education,



more specific language is required to make such a gift.

Section 11(b) [§ 39-3412(2)] provides that, if an anatomical gift of the decedent's body or parts does not pass to a named person designated in a document of gift, it passes to a procurement organization typically for transplantation or therapy and possibly for research or education. Custody of a body or part that is the subject of an anatomical gift that cannot be used for any intended purpose passes to the "person under obligation to dispose of the body or parts." *See* Section 11(i) [§ 39-3412(9)].

Section 11(j) [§ 39-3412(10)] prohibits a person from accepting an anatomical gift if the person knows that the gift was not validly made. For this purpose, if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of a refusal to make a gift if the refusal is on the same document of gift.

Lastly, Section 11(k) [§ 39-3412(11)] clarifies that nothing in this [act] affects the allocation of organs for transplantation or therapy except to the extent there has been a gift to a named recipient. *See* Section 11(a)(2) [§ 39-3412(1)(b)]. The allocation of organs is administered exclusively under policies of the Organ Procurement and Transplantation Network.

In part, Section 14 [§ 39-3415] has been redrafted to accord with controlling federal law when applicable. The federal rules require hospitals to notify an organ procurement organization or third party designated by the organ procurement organization of an individual whose death is imminent or who has died in the hospital to increase donation opportunity, and thus, transplantation. *See* 42 CFR § 482.45 (Medicare and Medicaid Programs: Conditions of Participation: Identification of Potential Organ, Tissue, and Eye Donors and Transplant Hospitals' Provision of Transplant-Related Data). The right of the procurement organization to inspect a patient's medical records in Section 14(e) [§ 39-3415(5)] does not violate HIPAA. *See* 45 CFR § 164.512(h) ("A covered entity may use or disclose protected health information to organ procurement organizations or other entities engaged in the procurement, banking, or transplantation of cadaveric organs, eyes, or tissue for the purpose of facilitating organ, eye, or tissue donation and transplantation"). Section 14(c) [§ 39-3415(3)] permits measures necessary to ensure the medical suitability of parts to be administered to a patient who is being evaluated to determine whether the patient has organs that are medically suitable for transplantation.

Section 17 [§ 39-3418] and Section 18 [§ 39-3419] deal with liability and immunity, respectively. (Section 16 [§ 39-3417], dealing with the sale of parts, also provides for poten-

tial liabilities but is essentially the same as prior law). Section 17 [§ 39-3418] includes a new provision establishing criminal sanctions for falsifying the making, amending, or revoking of an anatomical gift. Section 18 [§ 39-3419], in substance, is the same as the 1987 Act providing immunity for "good faith" efforts to comply with this [act]. However, while the [act] contains no provisions relating to bad faith it is important to note that other laws of the state and federal governments may provide for further remedies and sanctions for bad faith, including those under regulatory rules, licensing requirements, Unfair and Deceptive Practices acts, and the common law.

Section 18(c) [§ 39-3419(3)] provides that in determining whether an individual has a right to make an anatomical gift under Section 9 [§ 39-3409], a person, such as an organ procurement organization, may rely on the individual's representation regarding the individual's relationship to the donor or prospective donor.

Section 19 [§ 39-3420] sets forth rules relating to the validity of documents of gift executed outside of the state while providing that any document of gift shall be interpreted in accordance with the laws of the state.

Section 20 [§ 39-3421] authorizes an appropriate state agency to establish or contract for the establishment of a donor registry. It also provides that a registry can be established without a state contract. While this [act] does not specify in great detail what could or should be on a donor registry, it does mandate minimum requirements for all registries. First, the registry must provide a database that allows a donor or other person authorized to make an anatomical gift to include in the registry a statement or symbol that the donor has made a gift. Second, at or near the death of a donor or prospective donor, the registry must be accessible to all procurement organizations to obtain information relevant to determine whether the donor or prospective donor has made, amended, or revoked an anatomical gift. Lastly, the registry must be accessible on a twenty four hour, seven day a week basis.

Section 21 [§ 39-3422] creates a default rule to adjust the tension that might exist between preserving organs to assure their medical suitability for transplantation or therapy and the expression of intent by a prospective donor in either a declaration or advance health-care directive not to have life prolonged by use of life support systems. The default rule under this [act] is that measures necessary to ensure the medical suitability of an organ for transplantation or therapy may not be withheld or withdrawn from the prospective donor. A prospective donor could expressly provide otherwise in the declaration or advance health-care directive.



Sections 22 [§ 39-3423] and 23 [not adopted in Idaho] represent a complete revision of the relationship of the [coroner] [medical examiner] to the anatomical gift process. Previous versions of this [act] permitted the [coroner] [medical examiner], under limited circumstances, to make anatomical gifts of the eyes of a decedent in the [coroner's] [medical examiner's] possession. In light of a series of Section 1983 lawsuits in which the [coroner's] [medical examiner's] actions were held to violate the property rights of surviving family members, *see, e.g., Brotherton v. Cleveland*, 923 F.2d 477 (6th Cir. 1991), the authority of the [coroner] [medical examiner] to make anatomical gifts was deleted from this [act]. Parts, with the rare exception discussed in the comments to Section 9 [§ 39-3409], can

be recovered for the purpose of transplantation, therapy, research, or education from a decedent whose body is under the jurisdiction of the [coroner] [medical examiner] only if there was an anatomical gift of those parts under Section 5 [§ 39-3405] or Section 10 [§ 39-3410] of this [act].

This [act] includes a series of new provisions in Sections 22 [§ 39-3423] and 23 [not adopted in Idaho] relating to the relationship between the [coroner] [medical examiner] and procurement organizations. These provisions should encourage meaningful cooperation between these groups in hopes of increasing the number of anatomical gifts. Importantly, the section does not permit a [coroner] [medical examiner] to make an anatomical gift.

**39-3401. Short title.** — This chapter shall be known and may be cited as the “Revised Uniform Anatomical Gift Act.”

#### History.

I.C., § 39-3401, as added by 2007, ch. 30, § 2, p. 61.

#### STATUTORY NOTES

#### Prior Laws.

Former chapter 34 of Title 39, which comprised the following sections, was repealed by S.L. 2007, ch. 30, § 1.

39-3401. Definitions. [I.C., § 39-3401, as added by 1989, ch. 237, § 2, p. 574; am. 1991, ch. 203, § 3, p. 482; am. 2002, ch. 171, § 2, p. 493.]

39-3401A. Duties of state department of health and welfare. [I.C., § 39-3401A, as added by 1988, ch. 18, § 1, p. 20, was repealed by S.L. 1989, ch. 237, § 1.]

39-3402. Duties of state department of health and welfare. [I.C., § 39-3402, as added by 1989, ch. 237, § 2, was repealed by S.L. 1998, ch. 114, § 1, effective July 1, 1998.]

39-3403. Making, amending, revoking, and refusing to make anatomical gifts by individual. [I.C., § 39-3403, as added by 1989, ch. 237, § 2, p. 574; am. 1991, ch. 204, § 1, p. 484; am. 1996, ch. 136, § 1, p. 461; am. 2002, ch. 171, § 3, p. 493; am. 2006, ch. 265, § 1, p. 821.]

39-3404. Making, revoking, and objecting to anatomical gifts, by others. [I.C., § 39-3404, as added by 1989, ch. 237, § 2, p. 574; am. 2006, ch. 265, § 2, p. 821.]

39-3405. Authorization by coroner or local public health official. [I.C., § 39-3405, as added by 1989, ch. 237, § 2, p. 574; am. 2002, ch. 171, § 4, p. 493.]

39-3406. Routine referral and required request — Search and notification. [I.C., § 39-

3406, as added by 1989, ch. 237, § 2, p. 574; am. 2002, ch. 171, § 5, p. 493.]

39-3407. Certain persons authorized to conduct physical removal. [I.C., § 39-3407, as added by 2002, ch. 171, § 7, p. 493.]

39-3408. Delivery of document of gift. [I.C., § 39-3408, as added by 1989, ch. 237, § 2, p. 574; am. 2002, ch. 171, § 8, p. 493.]

39-3409. Rights and duties at death. [I.C., § 39-3409, as added by 1989, ch. 237, § 2, p. 574; am. 2002, ch. 171, § 9, p. 493.]

30-3410. Coordination of procurement and use. [I.C., § 39-3410, as added by 1989, ch. 237, § 2, p. 574.]

39-3411. Sale or purchase of parts prohibited. [I.C., § 39-3411, as added by 1989, ch. 237, § 2, p. 574; am. 2002, ch. 171, § 10, p. 493.]

39-3412. Examination — Autopsy — Liability. [I.C., § 39-3412, as added by 1989, ch. 237, § 2, p. 574; am. 2002, ch. 171, § 11, p. 493.]

39-3413. Anatomical gifts by living owners. [I.C., § 39-3413, as added by 2002, ch. 171, § 13, p. 493; am. 2004, ch. 383, § 1, p. 1145; am. 2006, ch. 265, § 3, p. 821.]

39-3413A. Requirements for informed consent. [I.C., § 39-3413A, as added by 2002, ch. 171, § 14, p. 493; am. 2004, ch. 383, § 2, p. 1145.]

39-3414. Transitional provisions. [I.C., § 39-3414, as added by 1989, ch. 237, § 2, p. 574.]

39-3415. Uniformity of application and construction. [I.C., § 39-3415, as added by 1989, ch. 237, § 2, p. 574.]

39-3416. Severability. [I.C., § 39-3416, as added by 1989, ch. 237, § 2, p. 574.]

39-3417. Short title. [I.C., § 39-3417, as added by 1989, ch. 237, § 2, p. 574; am. 2002, ch. 171, § 15, p. 493.]

39-3418. Enforcement. [I.C., § 39-3418, as added by 2002, ch. 171, § 16, p. 493.]

### RESEARCH REFERENCES

**Am. Jur.** — 22A Am. Jur. 2d, Dead Bodies, § 86 et seq.

61 Am. Jur. 2d, Physicians, Surgeons and Other Healers, § 243.

**A.L.R.** — Tort liability of physician or hospital in connection with organ or tissue transplant procedures. 76 A.L.R.3d 890.

Tests of death for organ transplant purposes. 76 A.L.R.3d 913.

Statutes authorizing removal of body parts for transplant: validity and construction. 54 A.L.R.4th 1214.

**39-3401A. Storage and transport of human bodies or body parts — Duties of state department of health and welfare — Enforcement and penalties.** — (1) In addition to any other duties and responsibilities, the director of the department of health and welfare shall register facilities for the storage and/or transport of human bodies or human body parts which are intended for research or for educational purposes. The director shall require such facilities to certify that the human body, part or parts to be supplied did not come from a person who has tested positive for acquired immunodeficiency syndrome (AIDS), AIDS related complexes (ARC), or other manifestations of human immunodeficiency virus (HIV) infection, and that the test was negative for the presence of HIV antibodies or antigens, hepatitis or other communicable diseases as that term is defined in departmental administrative rule.

(2) All facilities referred to in this section shall provide to the department, on a form provided by the department, the following: a place of business, legal mailing address, and a description of the nature of the facility, including the mechanism or manner of acquisition, storage and transport of human bodies or human body parts.

(3) The board of health and welfare shall promulgate rules implementing the provisions of this section.

(4) The director may initiate a civil enforcement action through the attorney general as provided in this subsection. Civil enforcement actions shall be commenced and prosecuted in the district court in and for the county in which the alleged violation occurred, and may be brought against any person who is alleged to have violated any provision of this section or any rule or order that has become effective pursuant to this section. Such action may be brought to compel compliance with any provision of this section or with any rule or order promulgated hereunder. The director shall not be required to initiate or prosecute an administrative action before initiating a civil enforcement action.

(5) Any person determined in a civil enforcement action to have violated any provision of this section or any rule or order promulgated pursuant to this section shall be liable for a civil penalty not to exceed one thousand dollars (\$1,000) per violation. The method of recovery of said penalty shall be by a civil enforcement action in the district court in and for the county where the violation occurred. All civil penalties collected under this section shall be paid into the general fund of the state.



**History.**

I.C., § 39-3401A, as added by 2008, ch. 256,  
§ 1, p. 748.

**STATUTORY NOTES****Cross References.**

Attorney general, § 67-1401 et seq.  
Board of health and welfare, § 56-1005.  
Director of department of health and wel-  
fare, § 56-1002 et seq.

**Prior Laws.**

Former § 39-3401A was repealed. See Prior  
Laws, § 39-3401.

**Compiler's Notes.**

The words enclosed in parentheses so ap-  
peared in the law as enacted.

**39-3402. Definitions.** — In this chapter:

- (1) "Adult" means an individual who is at least eighteen (18) years of age.
- (2) "Agent" means an individual:
  - (a) Authorized to make health care decisions on the principal's behalf by a power of attorney for health care; or
  - (b) Expressly authorized to make an anatomical gift on the principal's behalf by any other record signed by the principal.
- (3) "Anatomical gift" means a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research or education.
- (4) "Decedent" means a deceased individual whose body or part is or may be the source of an anatomical gift. The term includes a stillborn infant and, subject to restrictions imposed by law other than this chapter, a fetus.
- (5) "Disinterested witness" means a witness other than the spouse, child, parent, sibling, grandchild, grandparent or guardian of the individual who makes, amends, revokes or refuses to make an anatomical gift, or another adult who exhibited special care and concern for the individual. The term does not include a person to which an anatomical gift could pass under section 39-3412, Idaho Code.
- (6) "Document of gift" means a donor card or other record used to make an anatomical gift. The term includes a statement or symbol on a driver's license, identification card or donor registry.
- (7) "Donor" means an individual whose body or part is the subject of an anatomical gift.
- (8) "Donor registry" means a database that contains records of anatomical gifts and amendments to or revocations of anatomical gifts.
- (9) "Driver's license" means a license or permit issued by the Idaho transportation department to operate a vehicle, whether or not conditions are attached to the license or permit.
- (10) "Eye bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage or distribution of human eyes or portions of human eyes.
- (11) "Guardian" means a person appointed by a court to make decisions regarding the support, care, education, health or welfare of an individual. The term does not include a guardian ad litem.
- (12) "Hospital" means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.



(13) "Identification card" means an identification card issued by the Idaho transportation department.

(14) "Know" means to have actual knowledge.

(15) "Minor" means an individual who is under eighteen (18) years of age.

(16) "Organ procurement organization" means a person designated by the secretary of the United States department of health and human services as an organ procurement organization.

(17) "Parent" means a parent whose parental rights have not been terminated.

(18) "Part" means an organ, an eye, or tissue of a human being. The term does not include the whole body.

(19) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(20) "Physician" means an individual authorized to practice medicine or osteopathy under the law of any state.

(21) "Procurement organization" means an eye bank, organ procurement organization, or tissue bank.

(22) "Prospective donor" means an individual who is dead or near death and who has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research or education. The term does not include an individual who has made a refusal.

(23) "Reasonably available" means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.

(24) "Recipient" means an individual into whose body a decedent's part has been or is intended to be transplanted.

(25) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(26) "Refusal" means a record created under section 39-3407, Idaho Code, that expressly states an intent to bar other persons from making an anatomical gift of an individual's body or part.

(27) "Sign" means, with the present intent to authenticate or adopt a record:

(a) To execute or adopt a tangible symbol; or

(b) To attach to or logically associate with the record an electronic symbol, sound or process.

(28) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(29) "Technician" means an individual determined to be qualified to remove or process parts by an appropriate organization that is licensed, accredited or regulated under federal or state law. The term includes an enucleator.

(30) "Tissue" means a portion of the human body other than an organ or an eye. The term does not include blood unless the blood is donated for the purpose of research or education.

(31) “Tissue bank” means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage or distribution of tissue.

(32) “Transplant hospital” means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.

**History.**

I.C., § 39-3402, as added by 2007, ch. 30, § 2, p. 61.

**STATUTORY NOTES**

**Cross References.**

Donor status on driver’s license, § 49-315.  
Donor status on identification card, § 49-2444.

**Prior Laws.**

Former § 39-3402 was repealed. See Prior Laws, § 39-3401.

**Federal References.**

As to organ procurement organizations, referred to in subsection (16), see 42 USCS § 273 et seq.

**OFFICIAL COMMENT**

“Agent” (paragraph (2)) is an individual who, under certain circumstances, can make an anatomical gift on the principal’s behalf. An agent is empowered to make a gift if the agent is authorized by a power of attorney for health care to make health-care decisions on the principal’s behalf. Thus, this [act], independent of any other law, empowers an agent acting under a power of attorney for health care to make an anatomical gift on the principal’s behalf. It is unnecessary that states adopting this [act] amend their power of attorney for health care statutes to specifically empower agents to make anatomical gifts on behalf of principals. On the other hand, a state may choose to amend its health-care power of attorney statute in order that all of the agent’s powers, including the power to make an anatomical gift, are located and visible in one place setting forth the powers of a health-care agent. Even though this [act] enables an agent acting under a power of attorney for health care to make an anatomical gift, if the principal prohibits the agent from making an anatomical gift of the principal’s parts, the agent would have no authority to do so. See Section 4(2) [§ 39-3404(2)].

An agent also may be designated by a record, other than a power of attorney for health care, which authorizes the agent to make an anatomical gift. This would permit a principal to empower one individual to make health-care decisions and another individual to make anatomical gift decisions. In light of the definition of record, this authority could be expressed in a financial power of attorney.

“Anatomical gift” (paragraph (3)) means a gift that takes effect after the donor’s death.

Thus, an “anatomical gift” does not include a gift of an organ from a living donor to a living recipient.

“Decedent” (paragraph (4)) is defined as it was under prior versions of this [act] to include both stillborns and fetuses. A fetus, by definition, is not an embryo and nothing in this [act] allows for an anatomical gift of an embryo. Under other law fetuses can be used for research. *See*, 42 U.S. C. § 289g-1 & 289g-2; 42 CFR § 46.201.

By including stillborns and fetuses in the definition of “decedent,” this [act] assures that stillborns and fetuses continue to receive the statutory protections conferred by this [act]; namely that their bodies or parts cannot be used for transplantation, therapy, research, or education without the same appropriate consents afforded other prospective donors. The definition of decedent does not broaden the scope of available transplant or research subjects or techniques. Although the needs of research and transplantation may have changed and expanded since the original 1968 Act was drafted, the scope of this [act] with regard to the definition of those who may be a source of an anatomical gift has neither changed nor expanded. By its terms, this [act] is silent on the issue of the use or donation of blastocytes and embryos, neither authorizing nor prohibiting their donation or use. Similarly, this [act] is silent on the nature of the research to be performed and provides no authorization or prohibition for somatic cell nuclear transfer or other specific research techniques. The complicated legal, scientific, moral, and ethical issues which may arise in the consideration of such research is, or



should be, dealt with in separate statutes and policies. Thus, nothing in this [act] affects embryonic stem cell research. However, for jurisdictions that might prefer a more restrictive definition in the second sentence of the definition of "decendent," the following language is suggested: "The term does not include a blastocyst, embryo, or fetus that is the subject of an induced abortion."

"Disinterested witness" (paragraph (5)) means a witness other than those listed in the paragraph. Under Sections 5 [§ 39-3405] and 6 [§ 39-3406] anatomical gifts may be made or revoked. Under Section 7 [§ 39-3407] a person may also make or revoke a refusal. In most circumstances these acts must be evidenced by a record. However, in limited circumstances they can be evidenced by oral statements to at least two adult witnesses. In those circumstances at least one of the witnesses must be a disinterested witness.

"Document of gift" (paragraph (6)) includes a donor card or any other record. It also includes a donor registry (paragraph (8)), a driver's license (paragraph (9)), and an identification card (paragraph (13)). While a donor card is a record, the reference to donor cards had been specifically retained because of the wide acceptance of that concept in our culture. Prior versions of this [act] also expressly referred to a will in the definition of a document of gift. The omission in this [act] of a will in the definition of a document of gift does not mean a will is not a document of gift. Rather, the "will" is subsumed in the word "record." Where there is a need in this [act] to specially treat wills as documents of gift, the will is singled out from other documents of gift.

A statement or symbol on a driver's license or donor registry is a document of gift; it is not merely an expression of intent to make a gift. Therefore, where there is such a statement or symbol, no other document of gift is necessary to evidence the making of an anatomical gift. Potential donors utilizing records other than a driver's license or a donor registry to make an anatomical gift should be strongly encouraged to make their gifts on a driver's license or donor registry, as gifts on a license or registry are more likely to be discovered when the donor is dead or near death.

Under Section 5(b) [§ 39-3405(2)] a donor can make an anatomical gift by authorizing the persons who maintains a donor registry to include on the registry a statement or symbol that the donor has made an anatomical gift. By adding a "donor registry" as a device for making an anatomical gift, this [act] recognizes the increasing use of donor registries to make anatomical gifts. The use of donor registries was not contemplated when the previous versions of this act were adopted. Today, however, they have assumed increased importance and in time may come to dominate how anatomical gifts are made. While the format

of donor registries differ, generally they allow for the making of an anatomical gift of one or more parts and permit that gift to be made over the internet. No known donor registry provides for a refusal to make an anatomical gift, and this [act] does not require that they do so. The person who maintains a donor registry may, if it chooses, follow up an electronic registration by sending the donor a card to sign. However, that is not legally required by this [act] to make an effective anatomical gift.

"Donor" (paragraph (7)) means the individual whose body or part is the subject of an anatomical gift. Thus, an individual who signs a donor card or authorizes a symbol to be placed on a driver's license or donor registry evidencing an anatomical gift is a donor even though the part donated will not be removed from the donor until the donor dies. Likewise, if the family of a decedent who did not make an anatomical gift during life donates a part of the decedent, that decedent is a donor. Thus, "donor" refers to a living individual who made an anatomical gift or on whose behalf an anatomical gift was made to take effect in the future. The term also includes a decedent whose body or part is the subject of an anatomical gift. Anatomical gifts by a donor, as well as amendments, revocations, and refusals, may preclude the ability of others to make or revoke anatomical gifts on behalf of the donor. *See* Sections 7 [§ 39-3407] and 8 [§ 39-3408].

"Donor registry" (paragraph (8)) means a database containing records of anatomical gifts. The concept of the registry is new to this version of the anatomical gift act. Many states now have donor registries. Most of them are operated by private organizations, such as a procurement organization (paragraph (21)) while some are operated by the state. Section 20 [§ 39-3421] of this [act] authorizes states to either establish or contract for the establishment of a donor registry. Donor registries, like driver's licenses, are very effective devices to record the making of an anatomical gift. The making of an anatomical gift by these devices assures that the evidence of a gift is always available, unlike the traditional donor card which can often be lost. Furthermore, they are easily accessible by procurement organizations.

"Driver's license" (paragraph (9)) includes both driver's licenses for which adults qualify, as well as licenses or permits issued to minors whether denoted "temporary permit," "permit," or "learner's permit," or something else. State laws vary widely on how young an individual under the age of 18 can be to obtain a driver's license. For example, it is not uncommon for a learner's permit to be issued to a 16-year-old individual. And, in some states licenses or permits can be issued to 14-year-olds for the purpose of driving only certain



types of motorized vehicles, such as farm equipment. The definition of “driver’s license” is broad enough to include all of these. Furthermore, under the definition, a condition, such as that the holder must be accompanied by an adult or the holder can drive only certain types of vehicles, does not prevent the license or permit from being considered a “driver’s license” under this [act].

Under Section 4 [§ 39-3404] if a minor is of an age that the minor would be entitled to obtain a driver’s license, the minor can make an anatomical gift even though the minor does not actually apply for a license. Thus, a minor who could apply for a permit could make an anatomical gift by another means, such as a donor card or donor registry. Furthermore, if a minor acquires a license on which the minor has made an anatomical gift, the minor would not have to re-apply for a driver’s license when attaining age 18 for the gift to be effective.

This [act], however, does not require that licenses provide space for a notation that the holder is a donor. That mandate, if it exists, is left to other law.

“Guardian” (paragraph (11)) means any person judicially appointed to make decisions for the support, care, education, health, or welfare of the ward. The intent is to exclude guardians ad litem or temporary guardians who would not have an expected long-term relationship to the ward.

“Identification card” (paragraph (13)) means an identification card issued by the [state department of motor vehicles]. Some individuals desire an identification card rather than a driver’s license. These individuals could make an anatomical gift by authorizing a statement or symbol to be put on the card. While this [act] does not require that space be provided on the card for that purpose, it is anticipated that states will design these cards in ways to permit the making of an anatomical gift.

“Know” (paragraph (14)) means actual knowledge. Thus, it does not mean imputed knowledge. When imputed knowledge is relevant under any section of this [act], the section expressly so provides. *See, e.g.*, section 11(j).

“Parent” (paragraph (17)) means a parent whose parental rights have not been terminated. An adopting parent is a parent. On the

other hand, a stepparent or judicially appointed guardian not otherwise by law designated as the child’s parent is not a parent.

“Part” (paragraph (18)) means organ, eye, or tissue. While this definition is shorter than the definition in the 1987 Act, it is functionally the same because all parts of the human body, including bones and fluids, are encompassed within the definition. The definition excludes the whole body.

“Prospective donor” (paragraph (22)) means an individual who is dead or near death and has been determined to have one or more parts that could be medically suitable for transplantation, therapy, research, or education. The term includes an individual who made an anatomical gift during life and, therefore, is a donor. The term also includes a non-donor individual at or near the time of death with parts that are medically suitable for donation who could become a donor if the individual’s family made an anatomical gift under Section 9 [§ 39-3409]. The term does not include an individual who made a refusal as the refusal bars other persons from making an anatomical gift on that individual’s behalf.

“Reasonably available” (paragraph (23)) is defined in a manner similar to that in the Uniform Health-Care Decisions Act. A decision to make an anatomical gift, particularly of an organ, is extremely time sensitive. Life-saving organs may be forfeited if persons with a priority to make an anatomical gift under Section 9 [§ 39-3409] cannot be located. Physical presence, however, is not required to be “reasonably available.” An individual is “reasonably available” if the individual can be contacted without undue effort. Also, the concept assumes that an individual is willing to act in a timely manner to permit the successful recovery of organs. An individual who is unwilling to make a decision to either donate or refuse to donate in a timely manner is not considered to be “reasonably available.”

“Tissue” (paragraph (30)), as defined in this act, includes bone. The definition excludes blood unless donated for research or education. Blood is not obtained from deceased persons for purposes of transplantation or therapy. Furthermore, blood banks are not treated as tissue banks under other law. Accordingly, it is appropriate to exclude blood from the operation of this [act] except when donated for purposes of research or education.

**39-3403. Applicability.** — This chapter applies to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made.

#### History.

I.C., § 39-3403, as added by 2007, ch. 30, § 2, p. 61.

## STATUTORY NOTES

**Prior Laws.**

Former § 39-3403 was repealed. See Prior Laws, § 39-3401.

**39-3404. Who may make anatomical gift before donor's death. —** Subject to section 39-3408, Idaho Code, an anatomical gift of a donor's body or part may be made during the life of the donor for the purpose of transplantation, therapy, research or education in the manner provided in section 39-3405, Idaho Code, by:

- (1) The donor, if the donor is an adult or if the donor is a minor and is:
  - (a) Emancipated; or
  - (b) At least sixteen (16) years of age, provided however, that if the donor is sixteen (16) years of age or older and less than eighteen (18) years of age, a parent or an adult guardian must consent in writing in the presence of the donor.
- (2) An agent of the donor, unless the power of attorney for health care or other record prohibits the agent from making an anatomical gift;
- (3) A parent of the donor, if the donor is an unemancipated minor; or
- (4) The donor's guardian.

**History.**

I.C., § 39-3404, as added by 2007, ch. 30, § 2, p. 61.

## STATUTORY NOTES

**Prior Laws.**

Former § 39-3404 was repealed. See Prior Laws, § 39-3401.

## OFFICIAL COMMENT

Structurally, this [act] includes within Sections 4 [§ 39-3404] through 8 [§ 39-3408] provisions that were included in Section 2 of the 1987 Act. Section 4 [§ 39-3404] relates to who may make an anatomical gift before a donor dies, Section 5 [§ 39-3405] to the manner in which an anatomical gift may be made, Section 6 [§ 39-3406] to the amending and revoking of an anatomical gift, Section 7 [§ 39-3407] to the refusal to make an anatomical gift, and Section 8 [§ 39-3408] to the effect of gifts, amendments, and revocations on the ability of others to make an anatomical gift.

Like the predecessor acts, this [act] provides that an individual may make an anatomical gift of the individual's body or part if the individual is an adult. This [act], however, expands prior law in a number of ways.

In most states a minor, under limited circumstances, can apply for a driver's license. The minor might wish to be a donor. As a policy matter, if the minor is old enough to drive a vehicle the minor should be old

enough to make an anatomical gift. Thus, this [act] provides that a minor who could obtain a driver's license is empowered to make an anatomical gift whether on a driver's license or other document of gift. On the other hand, if the minor donor dies under the age of 18, it seems appropriate that the minor's parents should be able to revoke the gift. See Section 8(g) [§ 39-3408(7)]. Because the minor's parents cannot revoke the anatomical gift if the minor donor later dies over the age of 18, there is no necessity under this [act] for the minor donor to confirm that anatomical gift after reaching 18. Thus, in a state that provides that a license issued to a minor is good for five years and the minor applies for the license at age 17, the minor can make an anatomical gift on the driver's license and need not reaffirm the gift for another five years. Furthermore, once the minor reaches age 18, the minor's parents cannot revoke the gift.

Section 4 [§ 39-3404] expands prior law in other important respects. It permits anatom-



ical gifts by an emancipated minor. The act does not define "emancipated minor," although a common example would be a married minor. State laws vary regarding the definition of an emancipated minor. By not defining the phrase in this [act], the phrase is effectively defined by other law of the state.

Section 4 [§ 39-3404] expressly empowers an anatomical gift to be made on behalf of an individual by that individual's agent or a parent, if that individual is an unemancipated minor, or by a guardian.

An anatomical gift by an agent, parent, or guardian remains in effect until such time as amended or revoked by an agent, parent, or guardian, or by the donor on whose behalf the gift was made. For example, if a parent makes an anatomical gift for a minor and the parent does not revoke that gift before the minor reaches age 18 or becomes emancipated, the anatomical gift remains in effect until such time as it is altered by the donor or by the donor's agent or guardian. While agents, parents, and guardians can make an anatomical gift, they can not sign a refusal under Section 7 [§ 39-3407] on their principal's or ward's behalf. A refusal can only be made by that individual whose part or body might otherwise have been the subject of an anatomical gift.

As noted in the comments to the definitions, an agent acting under a power of attorney for health care is authorized merely by that des-

ignation to make an anatomical gift on the principal's behalf. If the principal does not wish to authorize the agent acting under a power of attorney for health care to make that decision, the power must include language to expressly negate that authority. *See* Section 4(2) [§ 39-3404(2)]. Conversely, if the agent is acting under another record, such as a financial power of attorney, the agent would be empowered to make an anatomical gift only if that authority was expressly conferred in the record. *See* Section 2(2)(B) [§ 39-3402(2)(b)].

Section 4 [§ 39-3404] specifically delineates the four purposes for which an anatomical gift may be made, namely, transplantation, therapy, research or education. The terms "transplantation", "therapy", "research" and "education" are not defined in this [act]. Rather, they are defined by their common usage in the communities to which they apply. In general terms, transplantation refers to the removal and grafting of one individual's body part into the body of another individual. Research is a process of testing and observing, the goal of which is to obtain generalizable knowledge, while therapy involves the processing and use of a donated part to develop and provide amelioration or treatment for a disease or condition. Education posits the use of the whole body or parts to teach medical professionals and others about human anatomy and its characteristics.

### **39-3405. Manner of making anatomical gift before donor's death.**

— (1) A donor may make an anatomical gift:

- (a) By authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor's driver's license or identification card;
- (b) In a will;
- (c) During a terminal illness or injury of the donor, by any form of communication addressed to at least two (2) adults, at least one (1) of whom is a disinterested witness; or
- (d) As provided in subsection (2) of this section.

(2) A donor or other person authorized to make an anatomical gift under section 39-3404, Idaho Code, may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and must:

- (a) Be witnessed by at least two (2) adults, at least one (1) of whom is a disinterested witness, who have signed at the request of the donor or the other person; and
- (b) State that it has been signed and witnessed as provided in paragraph (a) of this subsection.

(3) Revocation, suspension, expiration or cancellation of a driver's license or identification card upon which an anatomical gift is indicated does not invalidate the gift.



(4) An anatomical gift made by will takes effect upon the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.

**History.**

I.C., § 39-3405, as added by 2007, ch. 30,  
§ 2, p. 61.

**STATUTORY NOTES****Cross References.**

Donor status on driver's license, § 49-315.  
Donor status on identification card, § 49-2444.

**Prior Laws.**

Former § 39-3405 was repealed. See Prior Laws, § 39-3401.

**OFFICIAL COMMENT**

The execution formalities associated with the making of an anatomical gift generally remain the same as under the 1987 Act. However, in addition to the making of an anatomical gift by a donor card, will, or state-issued driver's license, an anatomical gift can also be made on a state-issued identification card or a donor registry.

Section 5(a) [§ 39-3405(1)] provides that a donor can make an anatomical gift by authorizing a statement or symbol to be imprinted on the donor's driver's license, in the donor's will, or during a terminal illness or injury, orally to at least two adult witnesses, at least one of whom is disinterested. Only a donor can make a gift under Section 5(a) [§ 39-3405(1)]. A Section 5(a) [§ 39-3405(1)] gift cannot be made by an agent, parent, or guardian.

Under Section 5(a)(2) [§ 39-3405(1)(b)] an anatomical gift can be made in a donor's will. The section is silent regarding who must sign the will. Statutes of Wills generally require wills to be signed by the testator, and under certain circumstances, permit wills to be signed by another individual acting on behalf of the testator at the testator's request and often in the testator's presence. *See* Uniform Probate Code § 2-502. Thus, an anatomical gift can be made by the will of a donor whether the will is signed by a donor or a third party acting at the donor's request.

Typically an anatomical gift of a part for transplantation or therapy is not made by a will. In fact, donors are ill-advised to make an anatomical gift by will as the terms of the will may not be known in sufficient time to allow for successful recovery of the gifted parts. Individuals who make an anatomical gift of their parts in a will for transplantation or therapy should make their wishes known by other means as well. On the other hand, some individuals donate their bodies to medical science for research or education, and they may do so by a will. Subsection (d) [(4)]

provides that, if an anatomical gift is made by will, it takes effect at the donor's death. The gift is valid even though the will is not probated or is declared invalid. *See* Section 5(d) [§ 39-3405(4)].

Subsection (a)(3) [(1)(c)] permits an oral gift by a terminally ill or injured donor if the donor's communication is addressed to at least two adult witness, at least one of whom is a disinterested witness. This subsection is new to anatomical gift acts. The ability to make an oral gift parallels the ability to make oral revocations and refusals.

Section 5(b) [§ 39-3405(2)] permits an anatomical gift by a signed donor card or other record. The card or record can be signed by any person (donor, agent, parent, or guardian) authorized to make an anatomical gift under Section 4 [§ 39-3404]. If the person making the gift is physically unable to sign the card or record, the record can be signed by another individual acting at the direction of the donor or other person making the gift. In this case, the record must be witnessed by at least two adult witnesses, at least one of whom is a disinterested witness. Furthermore, the record must state that it was signed and witnessed at the request of the donor or other person.

A disinterested witness is a witness other than the spouse, child, parent, sibling, grandchild, grandparent, or guardian, of the individual who makes, amends, revokes, or refuses to make an anatomical gift, or another adult who exhibited special care and concern for that individual. A disinterested witness also does not include any person to whom an anatomical gift could pass under Section 11 [§ 39-3412]. *See* Section 2(5) [§ 39-3402(5)]. For example, a terminally ill individual could make an anatomical gift by an oral communication to two unrelated neighbors or to one unrelated neighbor and one of the individual's adult children, but not to the individual's two adult children.

Section 5(b) [§ 39-3405(2)] also permits any person (donor, agent, parent, or guardian) authorized to make an anatomical gift under Section 4 [§ 39-3404] to make that gift by authorizing that a statement or symbol indicating that the donor has made a gift be included on a donor registry. Donor registries were not contemplated by the prior versions of this [act]. Since the promulgation of those versions, numerous donor registries have been created under the auspices of states or private organizations. Over time donor registries may become the primary device by which anatomical gifts are made by donors. *See* Section 20 [§ 39-3421] (creation of donor registry).

A decision was made in drafting this [act] not to include a specific form in the statute for the making of an anatomical gift. Rather, the drafting committee concluded that suggested forms consistent with this [act] be included in these comments. Three such forms follow:

DONOR CARD

I wish to donate my organs, eyes, and tissue. I give:  
☐ Any needed organs, eyes, and tissue      ☐ ONLY the following organs, eyes, and tissue:

Date: \_\_\_\_\_

Donor's Signature: \_\_\_\_\_

DONOR CARD

I wish to donate my organs, eyes, and tissue. I wish to give (complete either Section A, B, or C)

Subject of Gift:			Purpose of Gift:		
	Yes	No	Transplantation or therapy	Research or Education	Both
Section A ALL of my organs, eyes, and tissue	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Section B					
My Organs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
My Eyes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
My Tissue	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Section C					
Special Instructions (If none of the above apply), I wish to give ONLY:					

Date: \_\_\_\_\_

Donor's Signature: \_\_\_\_\_

DONOR CARD

I give, upon my death, the following gifts for the purpose of (*choose whichever applies*): [ ☐ only transplantation and therapy, [ ☐ only research and education, [ ☐ transplantation, therapy, research, or education

For the purposes specified above, I give:  
[ ☐ ALL needed organs, tissues, and eyes; or  
(If you checked the box immediately above, you should not check specific boxes below).  
[ ☐ Organs      [ ☐ Tissues      [ ☐ Eyes

If none of the above applies, I wish to give ONLY:  
The following organs and tissues: \_\_\_\_\_

Date: \_\_\_\_\_

Donor's Signature: \_\_\_\_\_

**39-3406. Amending or revoking anatomical gift before donor's death.** — (1) Subject to section 39-3408, Idaho Code, a donor or other person authorized to make an anatomical gift under section 39-3404, Idaho Code, may amend or revoke an anatomical gift by:

(a) A record signed by:

(i) The donor;

(ii) The other person; or

(iii) Subject to subsection (2) of this section, another individual acting at the direction of the donor or the other person if the donor or other person is physically unable to sign; or

(b) A later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.

(2) A record signed pursuant to subsection (1)(a)(iii) of this section must:

(a) Be witnessed by at least two (2) adults, at least one (1) of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(b) State that it has been signed and witnessed as provided in paragraph (a) of this subsection.

(3) Subject to section 39-3408, Idaho Code, a donor or other person authorized to make an anatomical gift under section 39-3404, Idaho Code, may revoke an anatomical gift by the destruction or cancellation of the document of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift.

(4) A donor may amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal illness or injury addressed to at least two (2) adults, at least one (1) of whom is a disinterested witness.

(5) A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in subsection (1) of this section.

#### **History.**

I.C., § 39-3406, as added by 2007, ch. 30,  
§ 2, p. 61.

### **STATUTORY NOTES**

#### **Prior Laws.**

Former § 39-3406 was repealed. See Prior Laws, § 39-3401.

### **OFFICIAL COMMENT**

Section 6 [§ 39-3406] largely mirrors the provisions in the prior acts. It applies to the amendment or revocation of an anatomical gift whether made by a donor or by another person acting on behalf of the donor.

Under Section 6(a)(1) [(1)(a)], an anatomical gift can be revoked or amended by a record signed by the donor or the other person authorized to make an anatomical gift under Section 4 [§ 39-3404]. If the donor or other person is physically unable to sign a record amending or revoking an anatomical gift, the record may be signed by another individual acting at the direction of the donor or other

person so long as the record is witnessed by at least two adult witnesses, at least one of whom is a disinterested witness. In this case, the record must state that it was signed and witnessed at the request of the donor or other person.

Subsection (a)(2) [(1)(b)], borrowing from statutes dealing with the revocation of wills, contemplates revocations or amendments made by a later-executed document of gift either expressly or by inconsistency. For example, suppose a donor executes a will bequeathing her entire body to Medical School A for research or education. Later, the donor



signs a document of gift donating a kidney for transplantation. Since the later-executed document of gift is only inconsistent with the prior document of gift to the extent of the donated kidney, the donor's kidney would, if medically suitable, pass to the appropriate procurement organization, and the donor's body without the kidney would pass to Medical School A. See Section 11 [§ 39-3412].

A driver's license that makes no provision for the making of an anatomical gift is not a document of gift because a document of gift is defined to be a donor card or other record "used to make an anatomical gift." See Section 2(6) [§ 39-3402(6)]. Therefore, a later-issued driver's license that is silent regarding the licensee's intent to make an anatomical gift would not be inconsistent with a prior driver's license on which the donor had made an anatomical gift. Thus, the gift on the prior license would still be effective. For donors using a driver's license to make an anatomical gift, however, it is wise to always make the gift on the most current license as motor vehicle departments may have expunged information on a previously issued license from their electronic databases.

There is no requirement under this [act] that documents of gift be dated. A "dating requirement" was purposely omitted to avoid invalidating documents of gift written without the advice of counsel that may not have included a date. That purposeful omission could result in some proof issues if a question arises whether one document of gift revokes another by inconsistency. There is little evidence to suggest that this would be a problem, but should it arise, the matter would have to be resolved by resort to any competent evidence. If the evidence is not available, a presumption should arise that the document of gift with the most comprehensive gift con-

trols given the policy of this [act] to favor the making of anatomical gifts.

Under Section 6(c) [(3)] an anatomical gift made by a document of gift also can be revoked by destruction of the document of gift if the destruction is done with the intent to revoke that gift. As a practical matter revocation by destruction is not possible for anatomical gifts made on a donor registry. A donor wishing to revoke anatomical gifts made on a donor registry should revise the registry. If an anatomical gift was evidenced by a written document that was destroyed inadvertently and cannot be found, there may be no effective Section 4 [§ 39-3404] anatomical gift because no one may know of the anatomical gift. Inadvertent destruction of donor cards is common. A card may be lost when the donor decides to clean out a wallet or purse. Thus, donors are well advised to make their wishes known on documents of gift with greater permanency, such as a driver's license or a donor registry, in order to reduce the risk of inadvertent destruction.

The ability to revoke an anatomical gift is subject to the limitations in Section 8 [§ 39-3408]. For example, if a donor makes an anatomical gift of a kidney, all other persons are precluded from revoking that gift. Therefore, the donor's later-appointed guardian would not be empowered to revoke that anatomical gift under Section 6 [this section].

Under Section 6(d) [(4)] an anatomical gift may also be amended or revoked by a donor with a terminal illness or injury by any form of communication that is addressed to at least two adult witnesses, at least one of whom must be a disinterested witness. If the donor cannot communicate orally, acceptable forms of communication, in addition to a record, could include a movement of the head or eye in response to specific questions.

### **39-3407. Refusal to make anatomical gift — Effect of refusal. —**

(1) An individual may refuse to make an anatomical gift of the individual's body or part by:

(a) A record signed by:

(i) The individual; or

(ii) Subject to subsection (2) of this section, another individual acting at the direction of the individual if the individual is physically unable to sign;

(b) The individual's will, whether or not the will is admitted to probate or invalidated after the individual's death; or

(c) Any form of communication made by the individual during the individual's terminal illness or injury addressed to at least two (2) adults, at least one (1) of whom is a disinterested witness.

(2) A record signed pursuant to subsection (1)(a)(ii) of this section must:

(a) Be witnessed by at least two (2) adults, at least one (1) of whom is a disinterested witness, who have signed at the request of the individual; and

(b) State that it has been signed and witnessed as provided in paragraph (a) of this subsection.

(3) An individual who has made a refusal may amend or revoke the refusal:

(a) In the manner provided in subsection (1) of this section for making a refusal;

(b) By subsequently making an anatomical gift pursuant to section 39-3405, Idaho Code, that is inconsistent with the refusal; or

(c) By destroying or canceling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.

(4) Except as otherwise provided in section 39-3408(8), Idaho Code, in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or part bars all other persons from making an anatomical gift of the individual's body or part.

#### **History.**

I.C., § 39-3407, as added by 2007, ch. 30,  
§ 2, p. 61.

### **STATUTORY NOTES**

#### **Prior Laws.**

Former § 39-3407 was repealed. See Prior Laws, § 39-3401.

### **OFFICIAL COMMENT**

Section 7 [this section] honors the autonomy of an individual whose body or part might otherwise be the subject of an anatomical gift by empowering the individual to make a refusal. There is no age limitation for an individual to sign a refusal. An individual of any age can do so. (However, if a minor has made a refusal and dies under the age of 18, the refusal can be revoked by the minor's parents. *See* Section 8(h) [§ 39-3408(8)]).

A refusal can only be made by the individual whose parts are the subject of the refusal. Thus, an individual's agent, parent, or guardian cannot make a refusal for the individual under Section 7 [this section] even though the agent, parent, or guardian could have made a gift for the individual under Section 4 [§ 39-3404].

Refusals typically are made by a signed record. If the individual who wants to sign a refusal cannot physically do so, the refusal can be signed by another individual acting at the request of the individual. If the refusal is signed by another individual acting at the request of the individual making the refusal, the refusal must be witnessed by at least two adults, at least one of whom is a disinterested witness. Furthermore, the record must state that it was signed and witnessed at the re-

quest of the individual. *See* Section 7(a)(1) and (b) [(1)(a) and (b)].

A refusal can also be made by the individual's will whether or not the will is admitted to probate or is later invalidated. Additionally, a refusal can be made by any form of communication by a terminally ill or injured individual addressed to at least two adults, at least one of whom is a disinterested witness. *See* Section 7(a)(3) [(1)(c)].

Subsection (c) [(3)] provides for the amendment or revocation of a refusal. A refusal may be revoked by a signed record. It can also be revoked by a later-made anatomical gift that is inconsistent with the refusal. For example, suppose an individual signs a refusal to be an organ donor under Section 7 [this section]. Later that individual signs a record stating only "I revoke the refusal." At this point that individual is neither a donor nor a refuser and upon the individual's death, an anatomical gift could be made by the person or persons listed in Section 9 [§ 39-3409]. On the other hand, suppose the individual who had signed a refusal later executed a document of gift donating "my eyes." Here there is an anatomical gift of the eyes and a refusal to be a donor of any other part. This would bar any person from revoking the anatomical gift of the eyes



or making an anatomical gift of any other part. Similarly, suppose the individual had signed a refusal and later obtained a driver's license stating that the individual wanted to be an "organ donor." The driver's license would revoke the refusal to the extent inconsistent with the refusal, and there would be an anatomical gift of the donor's organs, eyes, and tissue. See Section 11(f) [§ 39-3412(6)]. Lastly, under limited circumstances, a refusal can be revoked orally. See Section 7(c)(1) [(3)(a)].

Subsection (d) [(4)] provides that an individual's unrevoked refusal to make an anatomical gift of the individual's body or part bars all others from later making an anatomical gift of the body or part. Thus, suppose an individual signs an unrevoked Section 7 [this section] refusal. No other person before or after that individual's death could make an anatomical gift for that individual. This section honors the autonomy of the individual to refuse to have his body or parts become the subject of an anatomical gift. It prevents families from making donations on behalf of decedents who, while living, had signed a refusal to make an anatomical gift unless there is evidence that the individual signing the refusal did not intend to have that refusal bind others after death.

An individual might sign a Section 7 [this section] refusal that expressly provides that it is not intended to affect the ability of others to make an anatomical gift following the individual's death. If that intent is expressly indicated in the refusal, or if the refusal were later revoked, then other persons listed in Section 9 [§ 39-3409] can make an anatomical

cal gift. For example, suppose an individual signs a Section 7 [this section] refusal barring the making of an anatomical gift of the individual's body and parts. If that person does not revoke the refusal, then neither that individual's agent nor guardian nor any person listed in Section 9 [§ 39-3409] can make an anatomical gift of the individual's body or parts. However, it is possible that an individual might wish to bar the individual's guardian from making an anatomical gift under Section 5 [§ 39-3405] but not the individual's family from making a gift under Section 10 [§ 39-3410]. If that intent is expressed in the refusal, it will be honored. The intent to make only a limited refusal must be set forth expressly in the Section 7 [this section] refusal. Extrinsic evidence would not be admissible to establish intent to limit the refusal as subsection (d) [(4)] provides that a contrary indication be expressly set forth in the refusal.

An individual's refusal could be limited to a part. For example, an individual might sign a refusal to donate the individual's eyes. In the absence of an express, contrary indication, the refusal would not apply to the individual's other parts. Thus, following the individual's death, the persons listed in Section 9 [§ 39-3409] could make an anatomical gift of the individual's other parts.

A simple form of refusal under this [act] could provide:

I, \_\_\_\_\_, refuse to make any anatomical gift of my body or any part.

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Signature of Declarant

**39-3408. Preclusive effect of anatomical gift, amendment or revocation.** — (1) Except as otherwise provided in subsection (7) of this section and subject to subsection (6) of this section, in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending or revoking an anatomical gift of a donor's body or part if the donor made an anatomical gift of the donor's body or part under section 39-3405, Idaho Code, or an amendment to an anatomical gift of the donor's body or part under section 39-3406, Idaho Code.

(2) A donor's revocation of an anatomical gift of the donor's body or part under section 39-3406, Idaho Code, is not a refusal and does not bar another person specified in section 39-3404 or 39-3409, Idaho Code, from making an anatomical gift of the donor's body or part under section 39-3405 or 39-3410, Idaho Code.

(3) If a person other than the donor makes an unrevoked anatomical gift of the donor's body or part under section 39-3405, Idaho Code, or an amendment to an anatomical gift of the donor's body or part under section 39-3406, Idaho Code, another person may not make, amend or revoke the gift of the donor's body or part under section 39-3410, Idaho Code.

(4) A revocation of an anatomical gift of a donor's body or part under section 39-3406, Idaho Code, by a person other than the donor does not bar



another person from making an anatomical gift of the body or part under section 39-3405 or 39-3410, Idaho Code.

(5) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under section 39-3404, Idaho Code, an anatomical gift of a part is neither a refusal to give another part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or another person.

(6) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under section 39-3404, Idaho Code, an anatomical gift of a part for one (1) or more of the purposes set forth in section 39-3404, Idaho Code, is not a limitation on the making of an anatomical gift of the part for any of the other purposes by the donor or any other person under section 39-3405 or 39-3410, Idaho Code.

(7) If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.

(8) If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor's refusal.

#### **History.**

I.C., § 39-3408, as added by 2007, ch. 30,  
§ 2, p. 61.

### **STATUTORY NOTES**

#### **Prior Laws.**

Former § 39-3408 was repealed. See Prior Laws, § 39-3401.

### **OFFICIAL COMMENT**

Section 2(h) of the 1987 Act provided that "an anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of any person after the donor's death." The intent of that section was to assure donation finality for anatomical gifts made by donors prior to death. For many years, however, it was the practice, albeit now changing, for procurement organizations to seek permission from donor families before parts could be recovered from deceased donors. This practice, however, is inconsistent both with the 1987 Act and, more importantly, the respect due to donors who have made anatomical gifts during their lives. Furthermore, that practice could result in unnecessary delays in the recovery of organs.

Section 8 [this section] is designed to state firmly the rule that a donor's autonomous decision regarding the making of an anatomical gift is to be honored and implemented and is not subject to change by others. Section 8 [this section] not only continues the policy of making lifetime donations irrevocable but also is restated to take away from families the

power, right, or authority to consent to, amend, or revoke donations made by donors during their lifetimes.

Section 8 [this section] addresses the possible tension between a donor's autonomous decision to be a donor with the interest of surviving family members to make that decision. It addresses this tension by favoring the decision of the donor over the desires of the family. Section 8(a) [(1)] strips surviving family members of at least one stick in a bundle of property rights they might otherwise have under state law — the right to make, amend, or revoke an anatomical gift of a body or part if the donor made an anatomical gift or an amendment of the gift of the body or part. This section does not affect property rights families might otherwise have in a decedent's body under other law, such as the right to dispose of a decedent's body after the part that was the subject of the anatomical gift has been recovered. In fact, language in Section 11(h) [§ 39-3412(9)] confirms the family's right to dispose of the donor's body after the donor's parts have been recovered for transplantation, therapy, research, or education.

Section 8(a) [(1)] provides that, if a donor has made an anatomical gift or has amended an anatomical gift, no other person can make, amend, or revoke that gift. For example, suppose a donor gifts the donor's organs for transplantation. By virtue of Section 8(a) [(1)], no other person can amend or revoke that gift. In fact, because all other persons are barred from doing so, they have no legal authority or right to amend or revoke the anatomical gift. This section does not apply to bar the parents of an unemancipated minor donor who dies under the age of 18 from revoking the minor donor's gift. *See* Section 8(g) [(7)].

Section 8(a) [(1)] is subject to the provisions of subsection (f) [(6)]. Under subsection (f) [(6)] the donor's gift of a part for one purpose does not preclude another person from expanding the gift to include another purpose under either Section 5 or 10 [§§ 39-3405 or 39-3410]. For example, suppose the donor signs a document of gift stating: "I give my kidney for transplantation." Following the donor's death, an individual listed in Section 9 [§ 39-3409] could expand that gift to include research in the event the kidney was not medically suitable for transplantation. The right to expand the purposes of the gift can be restricted by the donor.

Section 8(b) [(2)] provides that the donor's revocation of an anatomical gift (as distinguished from a refusal) bars no one from making an anatomical gift of the donor's body or parts. The difference between Section 8(a) [(1)] and Section 8(b) [(2)] is that a revocation is an ambiguous act respecting the donor's intention to bind others. A donor might want to bind others, but it is just as likely that a donor was ambivalent and was more than willing to leave the decision to donate to others. For example, suppose an individual who had donated a kidney by a donor card later destroys that card with the intent to revoke the anatomical gift. This revocation will not prevent another person acting under either Section 5 or 10 [§§ 39-3405 or 39-3410] from making an anatomical gift. A donor who wishes both to revoke and bind others not to make a gift must sign a refusal.

Section 8(c) [(3)] provides that a gift or an amendment of a gift by a person other than the donor under Section 5 or 6 [§§ 39-3405 or 39-3406] bars other persons from making, amending, or revoking that gift under Section 10 [§ 39-3410] only. For example, suppose the guardian of an adult makes a gift on the adult's behalf. At the adult's later death, the adult's surviving child could not amend or revoke that gift. On the other hand, suppose a donor's agent makes a gift during the donor's lifetime and later a guardian is appointed for the donor. The guardian would not be barred from amending that gift or revoking it. The difference is that the persons named in Sec-

tion 4 [§ 39-3404] are viewed as the donor's alter egos with power to control the donation decision up until the time of the donor's death. Of course, the donor could also amend or revoke the agent's gift.

Under Section 8(d) [(4)] if a person other than the donor revokes an anatomical gift under Section 6 [§ 39-3406], the revocation does not bar another person from making a gift under either Section 5 [§ 39-3405] or Section 10 [§ 39-3410]. For example, suppose the donor's parent makes an anatomical gift. Twelve years later the donor's agent revokes that gift under Section 6 [§ 39-3406]. (Section 8(c) [(3)] does not bar the agent from revoking the gift). Then, five years later a guardian is appointed for the principal. The guardian could make an anatomical gift for the principal under Section 5 [§ 39-3405] because Section 8(d) [(4)] does not bar the guardian from making the gift. Likewise, the revocation of an anatomical gift by an agent, parent, or guardian would not prevent the making of an anatomical gift under Section 10 [§ 39-3410]. For example, suppose an agent makes an anatomical gift for a donor which the agent revokes prior to the principal's death. The principal takes no further action to effectuate the anatomical gift and dies survived by a spouse and predeceased by the agent. The spouse could make an anatomical gift under Section 10 [§ 39-3410] because the agent's revocation of the anatomical gift does not prevent the spouse from making the anatomical gift.

Section 8(e) [(5)], consistent with prior law, provides that, absent express, contrary indications by the person making an anatomical gift, the gift of a part is neither a refusal to give other parts nor a limitation on the making of gifts of other parts. Thus, if a donor makes an anatomical gift of the donor's kidney, this gift does not bar the donor's family after the donor's death from making a gift of the donor's heart.

Anatomical gifts can only be made for four purposes — transplantation, therapy, research or education. *See* Sections 4 and 9 [§§ 39-3404 and 39-3409]. Section 8(f) [(6)] provides that an anatomical gift of a part for one or more of the purposes of transplantation, therapy, research or education does not limit the ability to make a later gift of the part for other purposes by the donor or any other person under Section 5 or Section 10 [§ 39-3405 or § 39-3410]. For example, suppose a donor donates "all organs, eyes, and tissue for transplantation or therapy." That gift would not bar a gift under Section 10 [§ 39-3410] of the organs, eyes, or tissue for research. The donor can bar an expansion of the gift's purposes by an express contrary direction. For example a donor's gift of "organs, eyes, and tissue only for transplantation" would bar others from expanding the purpose of the gift to include research.



Section 8(g) [(7)] permits either parent of an unemancipated minor donor who dies under the age of 18 to revoke that gift. This subsection applies only if the child dies under the age of 18. It does not empower the parent of a living minor to revoke that minor's anatomical gift while the minor is living. In fact, Section 8(a) [(1)] would preclude the parent from revoking the minor child's anatomical gift. A parent who does not wish the parent's minor child to make an anatomical gift should communicate the parent's desires to that child. Once the minor donor becomes an

adult, neither parent has the right to revoke the gift.

Under Section 8(h) [(8)] an unemancipated minor's refusal can also be revoked by the minor's parent if the minor dies under the age of 18. Like Section 8(g) [(7)], a minor's refusal cannot be revoked by the minor's parent while the minor is alive.

Both Section 8(g) [(7)] and 8(h) [(8)] require the parent to be reasonably available to either revoke a gift or a refusal. If both parents are reasonably available, either one can revoke the gift or the refusal.

**39-3409. Who may make anatomical gift of decedent's body or part.** — (1) Subject to subsections (2) and (3) of this section and unless barred by section 39-3407 or 39-3408, Idaho Code, an anatomical gift of a decedent's body or part for purpose of transplantation, therapy, research or education may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:

(a) An agent of the decedent at the time of death who could have made an anatomical gift under section 39-3404(2), Idaho Code, immediately before the decedent's death;

(b) The spouse of the decedent;

(c) Adult children of the decedent;

(d) Parents of the decedent;

(e) Adult siblings of the decedent;

(f) Adult grandchildren of the decedent;

(g) Grandparents of the decedent;

(h) An adult who exhibited special care and concern for the decedent;

(i) The persons who were acting as the guardians of the person of the decedent at the time of death; and

(j) Any other person having the authority to dispose of the decedent's body.

(2) If there is more than one (1) member of a class listed in subsection (1)(a), (c), (d), (e), (f), (g) or (i) of this section entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under section 39-3412, Idaho Code, knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.

(3) A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under subsection (1) of this section is reasonably available to make or to object to the making of an anatomical gift.

**History.**

I.C., § 39-3409, as added by 2007, ch. 30,  
§ 2, p. 61.



## STATUTORY NOTES

**Prior Laws.**

Former § 39-3409 was repealed. See Prior Laws, § 39-3401.

## OFFICIAL COMMENT

Section 9(a) [(1)] empowers the persons listed in the section to make an anatomical gift of a decedent's body or parts unless they are otherwise barred from doing so under Section 7 [§ 39-3407] or Section 8 [§ 39-3408]. Persons who can make an anatomical gift under Section 9 [§ 39-3409] often will be consulted whether they would be willing to make a gift when the prospective donor is near death. *See also* Section 10 [§ 39-3410], comment (last paragraph).

The list of persons who can make an anatomical gift on behalf of a decedent is slightly expanded from prior law. This list now includes that individual who at the time of the decedent's death was acting as an agent of the decedent, adult grandchildren of the decedent, and a close friend of the decedent.

This [act] does not extend the agency relationship beyond a principal's death. Under other law, an agent's power under a power of attorney for health care or any other power terminates when the principal dies. But, under this [act] and assuming that the agent was neither barred under Section 8 [§ 39-3408] nor prohibited in the power of attorney for health care from making anatomical gifts, the person who had been acting as an agent at the time of the principal's death (even though death terminated the agency relationship) has the first priority to make an anatomical gift on behalf of the deceased principal.

Absent a donation by the decedent or the decedent's former agent, other persons or classes of person are empowered to make an anatomical gift in the following order: spouse of the decedent; adult children of the decedent; parents of the decedent; adult siblings of the decedent; adult grandchildren of the decedent; grandparents of the decedent; an adult who exhibited "special care and concern for the decedent;" and the person who was acting as guardian of the decedent at the time of the decedent's death. Lastly, "any other person having the authority to dispose of the decedent's body" can make the decision if no other persons are reasonably available. In those states that recognize domestic partners, the addition of the domestic partner to Section 9(a)(2) [(1)(b)] would be warranted. In states that do not recognize domestic partners, individuals with domestic partners who wish to be donors should make an anatomical gift before death or designate their domestic partners as agents to give them the first priority under this section.

To the extent that an individual is concerned that the person named in Section 9 [this section] may not take adequate account of the individual's personal preferences regarding anatomical gifts, the onus is on the individual to either make or bar the making of an anatomical gift.

In the absence of any person listed in paragraphs (1) through (9) [(1)(a) through (i)] to make an anatomical gift, the gift can be made by "any other person having the authority to dispose of the decedent's body." This [act], like its predecessors, does not specify what person has the authority to dispose of a decedent's body. Who that person is must be determined by law other than this [act]. One such person might be a coroner or medical examiner in possession of an unclaimed body who under law other than this [act] is authorized to dispose of the body after a certain period of time. Of course, in that case it is most unlikely that the decedent's organs could be donated as they are not likely to be medically suitable for transplantation or therapy given the amount of time that likely will pass before it can be determined that no one else will claim the body. But, the decedent's eyes or tissue might be medically suitable for donation. And, of course, the whole body could be the subject of an anatomical gift.

Subsection (a) [(1)] permits any member of a class to make an anatomical gift. Under subsection (b) [(2)], however, a class member cannot make an anatomical gift if the class member, or the person to which the gift could pass under Section 11 [§ 39-3412], knows of any objection to the making of the gift by another member of the class. If an objection is known, the gift can only be made by a majority of the members of the same class who are reasonably available. If the class member wishing to make the gift is the only reasonably available member of the class, that class member alone can make the gift even though the class member knows of an objection by another class member who is not reasonably available. If more than one member of the class is reasonably available, the gift can be made only if a majority of them agree. To illustrate, suppose the decedent is survived by three children. The eldest, who is unaware of any objection by the other two, can make an anatomical gift. If, however, the eldest knows that one of the other siblings objects and that sibling is reasonably available, both must agree to make the gift if the third sibling is

not reasonably available. If all three siblings are reasonably available, at least two would have to agree to make the gift.

This section departs from both the 1968 Act which required children to act by a majority and the 1987 Act which barred a class member from making a gift (and the donee from accepting the gift) if there was a known objection by another member of the class.

The rule of subsection (b) [(2)] does not apply to adults who exhibited special care and concern for the decedent. If there is more than one such person, any one of them can make an anatomical gift.

A person cannot make an anatomical gift if, at the time of the decedent's death, a person in a prior class is reasonably available to either make or object to the making of an anatomical gift. *See* Section 9(c) [(3)]. The assumption here is that a person in a prior class is reasonably available but has not yet been contacted by a procurement organization. For example, suppose only the decedent's grandchildren are physically present at the hospital when the decedent dies, but the decedent's children are able to be contacted. For purposes of this [act], the children are reasonably available and, therefore, the grandchildren who are at the hospital cannot make an anatomical gift.

As highlighted above, known objections by persons not reasonably available do not bar persons who are reasonably available from making an anatomical gift whether the objections are held by a person in a prior class or the same class. This is purposeful. The policy choice here is essentially that only persons who are reasonably available can make or object to the making of an anatomical gift. That is because the known objection of a person who is not reasonably available may be based upon faulty information about the effects of a gift or other concerns that could have been ameliorated had the person been reasonably available to discuss the matter with a procurement organization or others.

The concept and definition of "reasonably available" is drawn from lessons learned in the drafting of the Uniform Health-Care Decisions Act and borrows from the language in Section 1(14) of that act. The making of an anatomical gift following a decedent's death is extremely time sensitive, and a decision to donate must be made within a relatively short period of time following death if the organs are to remain viable and human lives are to be saved. Reasonably available is not synonymous with physically present. The phrase (defined in Section 2 (23)) [§ 39-3402(23)] means able to be contacted without "undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift." Thus, a sibling who can be easily contacted by telephone is reasonably available. Section 14(g) [§ 39-3415(7)] imposes on procurement organizations an obligation to make a reasonable search for persons with a priority to make an anatomical gift.

An individual with a higher priority to make an anatomical gift may be unwilling to make a decision, preferring it be made by others. For example, a decedent's spouse may be unwilling to make a decision to donate the decedent's organs, preferring that any decision be made by the decedent's children. Under this [act] the spouse, being unwilling to make a decision, is not reasonably available. There is some concern that an unwillingness to make a decision is equivalent to an objection and should have been treated as such under this [act]. But, this [act] reflects a judgment that the potential savings in human life justifies the position that the inability to express a decision is tantamount to not being available to make a decision. This policy choice was supported by the fact that procurement organizations are well-trained to work with family members when seeking an anatomical gift to distinguish between an objection and a true unwillingness to make a decision.

**39-3410. Manner of making, amending or revoking anatomical gift of decedent's body or part.** — (1) A person authorized to make an anatomical gift under section 39-3409, Idaho Code, may make an anatomical gift by a document of gift signed by the person making the gift or by that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication.

(2) Subject to subsection (3) of this section, an anatomical gift by a person authorized under section 39-3409, Idaho Code, may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more than one (1) member of the prior class is reasonably available, the gift made by a person authorized under section 39-3409, Idaho Code, may be:



- (a) Amended only if a majority of the reasonably available members agree to the amending of the gift; or
- (b) Revoked only if a majority of the reasonably available members agree to the revoking of the gift or if they are equally divided as to whether to revoke the gift.

(3) A revocation under subsection (2) of this section is effective only if, before an incision has been made to remove a part from the donor's body or before invasive procedures have begun to prepare the recipient, the procurement organization, transplant hospital, or physician or technician knows of the revocation.

#### History.

I.C., § 39-3410, as added by 2007, ch. 30,  
§ 2, p. 61.

### STATUTORY NOTES

#### Prior Laws.

Former § 39-3410 was repealed. See Prior Laws, § 39-3401.

### OFFICIAL COMMENT

Section 10(a) [(1)] provides that an anatomical gift by a person authorized to make the gift under Section 9 [§ 39-3409] can be made by a document of gift that is signed by the person making the gift. The document of gift could be an e-mail. This might be a common form of a document of gift where the gift is made by a person named in Section 9 [§ 39-3409] who is reasonably available but not physically present at the hospital where the donor died to deal in person with the procurement organization.

The person also may make the gift orally. An oral gift must be recorded or reduced to a record that is signed by the individual receiving the oral communication. For example, the decedent's spouse might consent to a gift over the telephone at the request of a procurement organization. The individual to whom the gift was communicated should then note that gift in a signed record.

In common with prior law, if a person makes an anatomical gift but there is a member of a prior class who becomes reasonably available, that member may revoke the gift. See Section 10(b)(2) [(2)(b)]. If more than one member of the prior class becomes reasonably available, then the gift can be revoked only if the majority of the members of the prior class agree to revoke the gift or if they are equally divided. See Section 10(b)(2) [(2)(b)]. For example, suppose an anatomical gift of a kidney is made by a parent of the decedent because none of the decedent's children are reasonably available to make the gift. However, before an incision is made to remove the kidney from the donor's body or invasive procedures have

begun to prepare the recipient, a child of the decedent becomes reasonably available and purports to revoke the gift. If this child is the decedent's only reasonably available child, the gift is revoked. If, on the other hand, two children become reasonably available, the gift is revoked only if they agree to revoke or they are equally divided whether to revoke. And, if three children become reasonably available, the gift is revoked if at least two of the three agree to revoke the gift.

If a gift is made by a member of a more remote class, the gift can be amended by the members of the prior class who become reasonably available. See Section 10(b)(1) [(2)(a)]. If more than one member becomes reasonably available, the gift can be amended only if a majority of them agree. See Section 10(b)(1) [(2)(a)]. For example, a grandchild of the decedent makes an anatomical gift of the decedent's kidneys for transplant. Any reasonably available child or, if more than one, a majority of them can amend the gift to provide that if the kidney is not medically suitable for transplant, it can be used for research. Amendments are not subject to subsection (c) [(3)] (requiring revocations to be made before the incision is made to remove a part from the body or before invasive procedures have begun to prepare the recipient) as amendments typically would involve extending the purpose of the gift rather than preventing the gift from being made at all.

This [act] is silent regarding whether a Section 10 [this section] gift can be made while a donor or prospective donor is near death or whether the gift can only be made



after the donor or prospective donor has died. This is purposeful in order to allow procurement organizations and the person having the priority to make an anatomical gift under Section 9 [§ 39-3409] some latitude as to

when to sign a document of gift. Of course, no gift is effective unless the donor or prospective donor dies and at the time of death the person making the anatomical gift then had the priority to make the gift.

**39-3411. Requirements for informed consent.** — In the absence of a document of gift or other evidence of an individual's intention to make or refuse to make an anatomical gift, the following information shall be provided to any person or persons, listed in section 39-3409, Idaho Code, approached for purposes of obtaining informed consent:

(1) A confirmation of the donor's identity and his or her clinical terminal condition;

(2) A general description of the purposes of anatomical gift donation;

(3) Identification of specific organs and/or tissues, including cells, that are being requested for donation, provided that subsequent information on the specific gifts recovered shall be supplied;

(4) An explanation that the retrieved organs and/or tissues may be used for transplantation, therapy, medical research or educational purposes;

(5) A general description of the recovery process including, but not limited to, timing, relocation of the donor if applicable, and contact information;

(6) An explanation that laboratory tests and a medical and/or social history will be completed to determine the medical suitability of the donor and that blood samples from the donor will be tested for certain transmissible diseases, including testing for HIV antibodies or antigens;

(7) An explanation that the spleen, lymph nodes and blood may be removed, and cultures may be performed, for the purpose of determining donor suitability and donor and recipient capability;

(8) A statement granting access to the donor's medical records and providing that the medical records may be released to other appropriate parties;

(9) An explanation that costs directly related to the evaluation, recovery, preservation and placement of the organs and/or tissues will not be charged to the family members of the donor;

(10) An explanation of the impact the donation process may have on burial arrangements and on the appearance of the donor's body; and

(11) A statement that tissues or parts may be retrieved and/or used by for-profit procurement entities.

**History.**

I.C., § 39-3411, as added by 2007, ch. 30,  
§ 2, p. 61.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-3411 was repealed. See Prior Laws, § 39-3401.

**39-3412. Persons that may receive anatomical gift — Purpose of anatomical gift.** — (1) An anatomical gift may be made to the following persons named in the document of gift:

- (a) A hospital; accredited medical school, dental school, college, or university; organ procurement organization; or other appropriate person, for research or education;
- (b) Subject to subsection (2) of this section, an individual designated by the person making the anatomical gift if the individual is the recipient of the part;
- (c) An eye bank or tissue bank.

(2) If an anatomical gift to an individual under subsection (1)(b) of this section cannot be transplanted into the individual, the part passes in accordance with subsection (7) of this section in the absence of an express, contrary indication by the person making the anatomical gift.

(3) If an anatomical gift of one (1) or more specific parts or of all parts is made in a document of gift that does not name a person described in subsection (1) of this section but identifies the purpose for which an anatomical gift may be used, the following rules apply:

- (a) If the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank.
- (b) If the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank.
- (c) If the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ.
- (d) If the part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization.

(4) For the purpose of subsection (3) of this section, if there is more than one (1) purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift must be used for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

(5) If an anatomical gift of one (1) or more specific parts is made in a document of gift that does not name a person described in subsection (1) of this section and does not identify the purpose of the gift, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (7) of this section.

(6) If a document of gift specifies only a general intent to make an anatomical gift by words such as “donor,” “organ donor” or “body donor,” or by a symbol or statement of similar import, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (7) of this section.

(7) For purposes of subsections (2), (5) and (6) of this section, the following rules apply:

- (a) If the part is an eye, the gift passes to the appropriate eye bank.
- (b) If the part is tissue, the gift passes to the appropriate tissue bank.
- (c) If the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(8) An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under subsection (1)(b) of this section, passes to the organ procurement organization as custodian of the organ.

(9) If an anatomical gift does not pass pursuant to subsections (1) through (8) of this section or the decedent's body or part is not used for transplantation, therapy, research or education, custody of the body or part passes to the person under obligation to dispose of the body or part.

(10) A person may not accept an anatomical gift if the person knows that the gift was not effectively made under section 39-3405 or 39-3410, Idaho Code, or if the person knows that the decedent made a refusal under section 39-3407, Idaho Code, that was not revoked. For purposes of this subsection, if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

(11) Except as otherwise provided in subsection (1)(b) of this section, nothing in this chapter affects the allocation of organs for transplantation or therapy.

#### **History.**

I.C., § 39-3412, as added by 2007, ch. 30, § 2, p. 61.

### **STATUTORY NOTES**

#### **Prior Laws.**

Former § 39-3412 was repealed. See Prior Laws, § 39-3401.

anatomical gifts act (2006) as adopted by the national conference of commissioners on uniform state laws.

#### **Compiler's Notes.**

This section is not part of the uniform

### **OFFICIAL COMMENT**

Section 11 [this section] sets forth various rules to identify the person to which a part or body passes as the result of an anatomical gift.

Under Section 11(a)(1) [(1)(a)], an anatomical gift of a body for research or education can be made to a named organization. These gifts typically occur as the result of a whole body donation to a particular institution in the donor's will or as the result of a prior arrangement between a donor and a particular research or educational institution.

While Section 11(a)(2) [(1)(b)] permits a donation of a part to a named individual if the part is to be transplanted into that individual, such donations are exceedingly rare for at least two reasons. Only in rare circumstances would a donor, during the donor's life, know of an individual who would need an organ, eye, or tissue that would be the subject of an anatomical gift and, similarly, decedent's families are generally not likely to know the identity of such individuals. Furthermore, gifts to a named individual may not be medically suitable as the donor and recipient may

have different blood types or other characteristics that make them incompatible.

If a gift of a part is made to a named individual and it is later determined that the part cannot be transplanted into that individual, the part passes to the organ procurement organization as custodian under subsection (g) [(7) to allocate the organ in accordance with applicable organ allocation policies unless the person making the gift expressly provides to the contrary. See Section 11(b) [(2)].

Gifts by donors before death and gifts by others after a donor's death could specify both the parts that are the subject of the anatomical gift and the purposes of the gift. For example, a donor might make a gift of a kidney for transplantation or therapy. If a gift is made of one or more specific parts and specifies the purposes of the gift but does not name a person to whom the gift passes, then the gift passes to the appropriate eye bank if the gift is an eye and for the purpose of transplantation or therapy. See Section 11(c)(1) [(3)(a)]. If the gift is of tissue for the



purpose of transplantation or therapy, it passes to the appropriate tissue bank, Section 11(c)(2) [(3)(b)], and if the gift is an organ for the purpose of transplantation or therapy it passes to the appropriate organ procurement organization as custodian of the organ, Section 11(c)(3) [(3)(c)]. A gift of a specific part for purposes of research or education passes to the appropriate eye bank, tissue bank, or organ procurement organization. *See* Section 11(c)(4) [(3)(d)]. *See also* Section 5 [§ 39-3405] comments, for examples of forms.

In some cases the person making the anatomical gift specifies that the gift can be used for transplantation, therapy, research, or education but these purposes are not set forth in the document of gift in any priority. For example, a donor might donate “my kidney for purposes of transplantation, therapy, research, or education.” Under Section 11(d) [(4)], the gift must first be used for transplantation or therapy if suitable for either of those purposes. If not suitable, the gift may be used for research or education.

Most gifts made by donors before death are made by a driver’s license or entry on a donor registry. If a donor’s gift does not specify the purpose of the gift, as would occur if the driver’s license indicated only that the donor was an “organ donor,” the gift is only of the donor’s parts (not the whole body), and the parts may be used only for transplantation or therapy. *See* Section 11(f) [(6)]. Likewise, if a gift of a part is made but the document of gift fails to specify the purpose of the gift or name a person to receive the gift, the part may be used only for transplantation or therapy. *See* Section 11(e) [(3)]. In either case, if the part is an eye, it passes to the appropriate eye bank, if tissue, it passes to the appropriate tissue bank, and if an organ, it passes to the appropriate organ procurement organization as custodian of the organ. *See* Section 11 (e), (f) and (g) [(5), (6) and (7)].

If a gift made under Section 4 [§ 39-3404] is limited to transplantation or therapy by Section 11(e) or (f) [(5) or (6)], procurement organizations could approach persons with a priority to make gifts under Section 9 [§ 39-3409] to expand the purpose of the gift to include research or education and obtain their consent to use the gift for those purposes in the event the gift is unsuitable for transplantation or therapy. *See* Section 8(f) [§ 39-3408(6)].

A statement on a document of gift that the donor is an “organ donor” is an anatomical gift and not merely evidence of intention to be a donor. *See* Section 11[(6)]. Thus, parts can be recovered from the donor without the need of a Section 10 [§ 39-3410] gift. Additionally, as an anatomical gift by the donor, surviving family members would be barred from revoking the gift. *See* Section 8 [§ 39-3408].

Under this [act], when an organ passes to an organ procurement organization for pur-

poses of transplantation or therapy, it passes to the organ procurement organization as a “custodian.” *See* Section 11(h) [(8)]. Under Section 274 of the National Organ Transplant Act in 1984, Congress created the Organ Procurement Transplantation Network (OPTN). *See*, 42 CFR §§ 121 et seq. Among other things, the OPTN oversees the nationwide allocation of organs for transplantation. Currently, the OPTN contracts with the United Network Organ Sharing (“UNOS”), a non-profit corporation, to administer the nationwide allocation of organs for transplantation. UNOS, in turn, has agreements with numerous organ procurement organizations that have specific designated service areas. The organ procurement organizations have primary responsibility to evaluate the medical suitability of organs for transplantation, seek anatomical gifts under Section 10 [§ 39-3410] when the decedent was not a donor at or near death, arrange for the procurement of organs from donors, and cause organs to be allocated and transferred to recipients in accordance with their contractual obligations with the OPTN. Thus, organs passing to organ procurement organizations under this [act] for the purpose of transplantation or therapy pass to them in a custodial capacity. There is no expectation that the organ procurement organization will retain the organ. Eyes and tissue pass to the appropriate eye or tissue bank under no similar restrictions; therefore, eye and tissue banks do not properly take as a custodian.

To assist in the evaluation of potential donors, federal law also requires hospitals receiving Medicare and Medicaid funding to refer all deaths or near deaths to organ procurement organizations or a third party designated by the organ procurement organization for possible organ, eye, and tissue donation. *See* 42 CFR § 482.45 (Medicare and Medicaid Programs: Conditions of Participation: Identification of Potential Organ, Tissue, and Eye Donors and Transplant Hospitals’ Provision of Transplant-Related Data). These referral requirements have made the provisions of Section 5 of the 1987 Act obsolete, and, accordingly, those provisions have been deleted from this [act].

Section 11(i) [(9)] provides that, if parts do not pass under the preceding provisions of the [act] or are not used for transplantation, therapy, research, or education, custody of the decedent’s body or parts vests in the person under obligation to dispose of them. The person having custody to dispose of the decedent’s body is determined by law other than this [act].

This [act] does not define the appropriate eye or tissue bank or organ procurement organization. Which of the many eye banks, tissue banks, or organ procurement organizations is the appropriate one is determined by

factors outside the scope of this [act]. For example, hospitals, coroners or medical examiners likely will have cooperative agreements with particular eye and tissue banks that coordinate eye and tissue donations. As for the appropriate organ procurement organizations, that is determined by the policies of the OPTN.

Under the common law, a gift is effectuated by intent, delivery, and acceptance. (But see Section 13(a) [§ 39-3414(1)] regarding delivery). In common with general principles of gift law, an express acceptance of an anatomical gift is not required. However, Section 11(j) [(10)] provides certain bars on the acceptance of an anatomical gift by a person that would trump the "acceptance presumption." A person may not accept an anatomical gift if the person knows of a Section 7 [§ 39-3407] refusal. A person may not accept an anatomical gift if the person knows that a gift once made had been revoked or that a gift under Section 5 or 10 [§ 39-3405 or 39-3410] was not properly made. For example, suppose the dece-

dent's children wish to donate organs that under Section 11 [this section] would pass to an organ procurement organization but that organization knows that the decedent's spouse is reasonably available to make or refuse to make a gift. The organ procurement organization may not accept the purported gift from the children. Suppose an organ procurement organization knows an anatomical gift was made on a document of gift. Because of the imputed knowledge requirement in the last sentence of Section 11(j) [(10)], the organization may not accept that gift if on the same document of gift there is evidence that the gift was revoked.

Lastly, nothing in this [act] affects the allocation of organs for transplantation or therapy except in the case of a gift to a named individual under Section 11(a)(2) [(1)(b)]. See Section 11(k) [(11)]. As noted above, the allocation of organs is controlled by the policies of the OPTN.

**39-3413. Search and notification.** — (1) The following persons shall make a reasonable search of an individual who the person reasonably believes is dead or near death for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal:

(a) A law enforcement officer, firefighter, paramedic or other emergency rescuer finding the individual; and

(b) If no other source of the information is immediately available, a hospital, as soon as practical after the individual's arrival at the hospital.

(2) If a document of gift or a refusal to make an anatomical gift is located by the search required by subsection (1)(a) of this section and the individual or deceased individual to whom it relates is taken to a hospital, the person responsible for conducting the search shall send the document of gift or refusal to the hospital.

(3) A person is not subject to criminal or civil liability for failing to discharge the duties imposed by this section but may be subject to administrative sanctions.

#### **History.**

I.C., § 39-3413, as added by 2007, ch. 30,  
§ 2, p. 61.

### **STATUTORY NOTES**

#### **Prior Laws.**

Former § 39-3413 was repealed. See Prior Laws, § 39-3401.

### **OFFICIAL COMMENT**

This section remains in substance the same as the prior 1968 and 1987 Acts. The constitutional standards of "reasonable search" under state and federal laws apply. In ordinary

circumstances, reasonable search would only be of the person or in the immediate vicinity of the person. No courts have applied or extended this provision to allow a random and



extensive search of premises. Because most likely an anatomical gift would have been made on a driver's license or donor registry and any donation on them is readily accessed

by a procurement organization, there is no significant need to extend this section to allow searches of the premises.

**39-3414. Delivery of document of gift not required — Right to examine.** — (1) A document of gift need not be delivered during the donor's lifetime to be effective.

(2) Upon or after an individual's death, a person in possession of a document of gift or a refusal to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to which the gift could pass under section 39-3412, Idaho Code.

**History.**

I.C., § 39-3414, as added by 2007, ch. 30, § 2, p. 61.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-3414 was repealed. See Prior Laws, § 39-3401.

**OFFICIAL COMMENT**

Section 13(a) [(1)], in common with prior versions of this [act], rejects the common-law principle that a gift requires delivery to be effective. With the exception of gifts of whole bodies in deeded body programs, most anatomical gifts made by a donor during the donor's life are made without any communication between the person making the gift and the person to which the gift passes under Section 11 [§ 39-3412] and for obvious reasons — the person is likely unknown.

This section does not affirmatively require any person in possession of a document of gift or a refusal to come forward at a decedent's death with that information. *But see* Section

12(b) [§ 39-3413(2)] (obligation of certain individuals to deliver a document of gift or refusal following a search). On the other hand, if a document of gift or a refusal is in the possession of someone other than the donor, that person shall allow other persons who can make or object to the making of an anatomical gift to review and copy such records. They shall also allow the person to which a gift could pass under Section 11 [§ 39-3412] to examine and copy such documents. *See* Section 13(b) [(2)]. *See also* Section 20(c)(2) [§ 39-3421(3)(b)].

**39-3415. Rights and duties of procurement organization and others.** — (1) When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the Idaho transportation department and any donor registry that it knows exist for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

(2) A procurement organization must be allowed reasonable access to information in the records of the Idaho transportation department to ascertain whether an individual at or near death is a donor.

(3) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research or



education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.

(4) Unless prohibited by law other than this chapter, at any time after a donor's death, the person to which a part passes under section 39-3412, Idaho Code, may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.

(5) Unless prohibited by law other than this chapter, an examination under subsection (3) or (4) of this section may include an examination of all medical and dental records of the donor or prospective donor.

(6) Upon the death of a minor who was a donor or who had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(7) Upon referral by a hospital under subsection (1) of this section, a procurement organization shall make a reasonable search for any person listed in section 39-3409, Idaho Code, having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended or revoked, it shall promptly advise the other person of all relevant information.

(8) Subject to section 39-3412(9), Idaho Code, the rights of the person to which a part passes under section 39-3412, Idaho Code, are superior to the rights of all others with respect to the part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and this chapter, a person that accepts an anatomical gift of an entire body may allow embalming, burial or cremation, and use of remains in a funeral service. If the gift is of a part, the person to which the part passes under section 39-3412, Idaho Code, upon the death of the donor and before embalming, burial or cremation, shall cause the part to be removed without unnecessary mutilation.

(9) Neither the physician who attends the decedent at death nor the physician who determines the time of the decedent's death may participate in the procedures for removing or transplanting a part from the decedent.

(10) A physician or technician may remove a donated part from the body of a donor that the physician or technician is qualified to remove.

#### **History.**

I.C., § 39-3415, as added by 2007, ch. 30,  
§ 2, p. 61.

#### **STATUTORY NOTES**

##### **Cross References.**

Donor status on driver's license, § 49-315.  
Donor status on identification card, § 49-2444.

##### **Prior Laws.**

Former § 39-3415 was repealed. See Prior Laws, § 39-3401.

## OFFICIAL COMMENT

When a hospital refers an individual at or near death to a procurement organization, Section 14(a) [(1)] requires the procurement organization to conduct a reasonable search of the motor vehicle records or of any donor registry it knows to exist for the geographical area in which that individual resides to determine if that individual is a donor. This [act] does not require a hospital to make a referral to a procurement organization. However, a referral may be required by contract or by law other than this [act]. *See, e.g.*, Section 42 CFR § 482.45.

Section 14(b) [(2)] requires a state department of motor vehicles to allow all procurement organizations reasonable access to information in the department's records.

Procurement organizations may conduct a reasonable examination to determine the medical suitability of a part that is or could be the subject of an anatomical gift. This examination typically is made in a relatively short period of time. During the examination period, measures necessary to ensure the medical suitability of a part cannot be withdrawn from the individual who was referred to the procurement organization unless the procurement organization or hospital knows that individual expressly provided to the contrary. *See* Section 14(c) [(3)]. A general direction in a power of attorney for health care or advance health-care directive that the patient does not wish to have life prolonged by the administration of life support systems should not be construed as an expression of a contrary intent. *See* Section 14(c) [(3)]. *See also*, Section 21 [§ 39-3422].

Persons to whom the part passes after the donor's death also may conduct a reasonable examination to ensure the medical suitability of the part. An examination includes an examination of the relevant medical records. *See* Section 14(e) [5]. Section 14(e) [5] is not inconsistent with Section 164.512(h) of the HIPAA regulations permitting the disclosure without consent of protected health information "to organ procurement organizations or other entities engaged in the procurement, banking, or transplantation of cadaveric organs, eyes, or tissue for the purpose of facilitating organ, eye, or tissue donation and transplantation."

If a minor donor dies, the minor's parents are entitled to revoke the minor's anatomical

gift or refusal, if any. Section 14(f) [6] requires a procurement organization to make a reasonable search for the minor's parents to provide them with an opportunity to do so.

Under Section 14(g) [7], a procurement organization also is required to make a reasonable search for any person empowered to make a gift under Section 9 [§ 39-3409]. If the donor made an anatomical gift of all parts for transplantation, therapy, research, or education or of the donor's whole body, there would be no one under Section 9 [§ 39-3409] with a priority to make a gift because the persons listed in Section 9 [§ 39-3409] would be barred by Section 8 [§ 39-3408] from making or revoking the gift. Thus, if a donor made such a gift, there is no reason for procurement organizations to search for any of the persons named in Section 9 [§ 39-3409].

Section 14(g) [(7)] also requires a procurement organization that acquires knowledge that an anatomical gift has been made to another person to advise that person of the gift. For example, suppose an organ procurement organization discovers, while searching a donor registry, that an anatomical gift was made of the eyes. The organ procurement organization is required to notify the appropriate eye bank of that gift.

Under Section 14(j) [(10)] neither the physician who attends the decedent at death nor the physician who determines the time of death may participate in the procedures for removing or transplanting a part. The concept of "attends" is well known in the medical profession and contemplates the attending physician who cared for the donor during the donor's life. This section is similar to provisions in prior law and is intended to bar what might otherwise be perceived as a conflict of interest should a physician attend both the donor and the recipient. Some surveys have suggested that a small segment of the population believes that a patient who might die without proper medical attention may not be treated in order that the patient's organs can be used for another. While there is absolutely no evidence that this has ever occurred, this section is included in this [act] to address any public misperceptions by making clear that it should not be able to happen legally.

**39-3416. Coordination of procurement and use.** — Each hospital in this state shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.

**History.**

I.C., § 39-3416, as added by 2007, ch. 30, § 2, p. 61.



## STATUTORY NOTES

**Prior Laws.**

Former § 39-3416 was repealed. See Prior Laws, § 39-3401.

## OFFICIAL COMMENT

42 CFR § 482.45 (Medicare and Medicaid Programs: Conditions of Participation: Identification of Potential Organ, Tissue, and Eye Donors and Transplant Hospitals' Provision of Transplant-Related Data) sets forth criteria requiring hospitals and organ procurement organizations to have cooperative agreements to permit organ procurement organizations to determine the suitability of organs for transplant. Furthermore in the absence of alternative arrangements by a hospital, organ procurement organizations have the responsibility to determine the suitability of tissues and eyes using the definition of poten-

tial tissue and eye donors and the notification protocol developed in consultation with the tissue and eye banks identified by the hospital for this purpose. Hospitals are also required to (1) have an agreement with at least one tissue bank and one eye bank to cooperate in the retrieval, processing, preservation, storage, and distribution of tissue and eyes and (2) ensure, working with organ procurement organizations, that families of potential donors are informed of the option of donating eyes, tissue, and organs.

**39-3417. Sale or purchase of parts prohibited.** — (1) Except as otherwise provided in subsection (2) of this section, a person that for valuable consideration, knowingly purchases or sells a part for transplantation or therapy if removal of a part from an individual is intended to occur after the individual's death commits a felony and upon conviction is subject to a fine not exceeding fifty thousand dollars (\$50,000) or imprisonment not exceeding five (5) years, or both such fine and imprisonment.

(2) A person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation or disposal of a part.

(3) A coroner acting pursuant to this section shall not authorize the removal of a part from a body within the coroner's custody if the coroner, or any deputy or agent of the coroner, derives or may derive any direct or indirect financial benefit relative to the removal, donation or use of the part.

**History.**

I.C., § 39-3417, as added by 2007, ch. 30, § 2, p. 61.

## STATUTORY NOTES

**Prior Laws.**

Former § 39-3417 was repealed. See Prior Laws, § 39-3401.

## OFFICIAL COMMENT

This section applies only to anatomical gifts and is substantially the same as the provisions in the 1968 and 1987 Acts. It only applies to sales of parts intended to be recovered from a decedent after death for trans-

plantation or therapy. It remains essentially unchanged from prior law. This section is consistent and in accord with the National Organ Transplant Act, 42 U.S. C. § 274(e).



**39-3418. Other prohibited acts.** — A person that, in order to obtain a financial gain, intentionally falsifies, forges, conceals, defaces or obliterates a document of gift, an amendment or revocation of a document of gift, or a refusal commits a felony and upon conviction is subject to a fine not exceeding fifty thousand dollars (\$50,000) or imprisonment not exceeding five (5) years, or both such fine and imprisonment.

**History.**

I.C., § 39-3418, as added by 2007, ch. 30,  
§ 2, p. 61.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-3418 was repealed. See Prior Laws, § 39-3401.

**OFFICIAL COMMENT**

This section is new and addresses abuses that have been widely reported. It criminalizes the intentional falsification of a document of gift or refusal when done to obtain a financial gain. For example, suppose a person falsifies a document of gift in order to sell a decedent's part to a research institution. The person who falsified the document of gift would be guilty of a felony.

The only express liability sections in this [act] are in Section 16 [§ 39-3417] relating to

sales and Section 17 [this section] relating to falsified documents. Occasional news stories have surfaced about alleged other improprieties in the procurement and allocation of organs and some have argued that this [act] should address them. However, those other improprieties are addressed by law other than this [act] or administratively, including regulatory rules, licensing requirements, Unfair and Deceptive Practices Acts, and the common law.

**39-3419. Immunity.** — (1) A person that acts in accordance with this chapter or with the applicable anatomical gift law of another state, or attempts in good faith to do so, is not liable for the act in a civil action, criminal prosecution or administrative proceeding.

(2) Neither the person making an anatomical gift nor the donor's estate is liable for any injury or damage that results from the making or use of the gift.

(3) In determining whether an anatomical gift has been made, amended or revoked under this chapter, a person may rely upon representations of an individual listed in section 39-3409(1)(b), (c), (d), (e), (f), (g) or (h), Idaho Code, relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.

**History.**

I.C., § 39-3419, as added by 2007, ch. 30,  
§ 2, p. 61.

**OFFICIAL COMMENT**

A version of subsection (a) [(1)] has been in the two prior anatomical gift acts. See Subsection 7(c) of the 1968 Act and Section 11(c) of the 1987 Act. In the 1968 Act, "good faith" had the common-law meaning of honesty-in-fact. In short, it was meant to be a subjective

standard involving determination of the intent or state of mind of the person concerned, namely the honesty of intent. As the official comment for Section 7 of the 1968 Act states: "The entire section 7 merits genuinely liberal interpretation to effectuate the purpose and

intent of the Uniform Act, that is, to encourage and facilitate the important and ever increasing need for human tissue and organs for medical research, education and therapy, including transplantation." Thus, immunity was intended to be extended to persons which [who] generally and substantively act in accordance with the 1968 Act, with honesty of intent.

If parties were held to an overly strict adherence to this [act] when transplants must be made shortly after the decedent's death, it might well have a chilling effect on the making of anatomical gifts for the purpose of transplantation or therapy. This [act] retains the meaning of the term of "good faith" in the 1968 Act in order to encourage and facilitate transplantation. On the other hand, if a person acts in subjective "bad faith," the common law provides remedies.

In order to encourage donations, Section 18(b) [(2)] immunizes the person making an anatomical gift and the donor's estate from any liability for damages resulting from the making or using of an anatomical gift. Persons who make anatomical gifts and donors have little or no ability to determine the medical suitability or risks associated with transplantation or therapy of donated parts. Risk assessment is appropriately left to the medical community, broadly conceived.

When an individual at or near death who is not a donor has been referred to a procure-

ment organization, the organization will seek out persons to discuss the possibility of making an anatomical gift if the individual had not made a refusal. Because the gift can only be made by the persons listed in Section 9 [§ 39-3409] with the appropriate priority, Section 18(c) [(3)] provides that procurement organizations can rely on the representations of the individuals listed in Section 9(a)(2) through (8) [§ 39-3409(1)(b) through (h)] as to their relationship to the donor or prospective donor. This immunity does not apply if the individual who documents a gift knows the representation is false.

The purpose of subsection (c) [(3)] is to relieve procurement organizations of the burden of ascertaining the truthfulness of relationship claims because proof may be impracticable or time consuming in light of the need to act expeditiously to effectuate an anatomical gift. For example, if an individual claims to be the decedent's spouse or child, the procurement organization can rely on that representation. This immunity does not run to persons claiming to be agents or guardians or persons who have authority to dispose of a decedent's body. Agents or guardians should have documentation of their relationship readily available or their relationship to the donor or prospective donor will likely be reflected in the available medical records.

**39-3420. Law governing validity — Choice of law as to execution of document of gift — Presumption of validity. —** (1) A document of gift is valid if executed in accordance with:

- (a) This chapter;
- (b) The laws of the state or country where it was executed; or
- (c) The laws of the state or country where the person making the anatomical gift was domiciled, has a place of residence or was a national at the time the document of gift was executed.

(2) If a document of gift is valid under this section, the law of this state governs the interpretation of the document of gift.

(3) A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked.

#### **History.**

I.C., § 39-3420, as added by 2007, ch. 30, § 2, p. 61.

#### **OFFICIAL COMMENT**

Section 19 [this section] is new to the anatomical gift act and accomplishes two things. First, it assures that a document of gift is valid if it was valid either in the place where executed or in the place where the person making the gift was domiciled, had a resi-

dence, or was a national. This section tracks like provisions for wills, such as Section 2-506 of the Uniform Probate Code.

More importantly, Section 19(c) [(3)] provides that a person can presume a document of gift to be valid unless the person has actual

knowledge that it was not validly executed or was revoked. For example, if the person knows that the donor had signed a Section 7 [§ 39-3407] refusal but the document of gift

was signed by the decedent's spouse following the decedent's death, the person knows that the document of gift was not validly executed.

**39-3421. Donor registry.** — (1) The Idaho transportation department shall cooperate with a person that administers any donor registry that this state establishes, contracts for, or recognizes for the purpose of transferring to the donor registry all relevant information regarding a donor's making, amendment to, or revocation of an anatomical gift.

- (2) A donor registry must:
- (a) Allow a donor or other person authorized under section 39-3404, Idaho Code, to include on the donor registry a statement or symbol that the donor has made, amended or revoked an anatomical gift;
  - (b) Be accessible to a procurement organization to allow it to obtain relevant information on the donor registry to determine, at or near death of the donor or a prospective donor, whether the donor or prospective donor has made, amended or revoked an anatomical gift; and
  - (c) Be accessible for purposes of paragraphs (a) and (b) of this subsection seven (7) days a week on a twenty-four (24) hour basis.
- (3) Personally identifiable information on a donor registry about a donor or prospective donor shall not be used or disclosed without the express consent of the donor, prospective donor, or person that made the anatomical gift for any purpose other than to determine, at or near death of the donor or prospective donor, whether the donor or prospective donor has made, amended or revoked an anatomical gift.

(4) This section does not prohibit any person from creating or maintaining a donor registry that is not established by or under contract with the state. Any such registry must comply with subsections (2) and (3) of this section.

**History.**  
I.C., § 39-3421, as added by 2007, ch. 30,  
§ 2, p. 61.

STATUTORY NOTES

**Cross References.** Donor status on identification card, § 49-2444.  
Donor status on driver's license, § 49-315.

OFFICIAL COMMENT

A donor registry is one of many devices to facilitate the making of anatomical gifts. In time, it may prove to be the most effective way of making anatomical gifts, particularly when the records of the state department of motor vehicles and the donor registry can be coordinated to assure a unitary source of donor information. This section is intended primarily to encourage states to facilitate the creation of donor registries operated by the state or by another. This section should not be construed to prohibit otherwise valid anatom-

ical gifts as provided for in Section 5 [§ 39-3405].  
The section sets forth minimum requirements for a donor registry whether created by the state or not. These requirements are that the registry: (1) provide an electronic database that allows persons to make an anatomical gift by use of a statement or symbol; (2) be accessible to all procurement organizations at or near the time of death of a donor or prospective donor to determine whether the donor or prospective donor made, amended, or revoked an anatomical gift; and (3) be opera-



tional on a seven day a week, twenty-four hour basis.

Under subsection (d) [(3)], a donor's personally identifiable information on a donor registry may not be used or disclosed without appropriate consent except to determine whether the donor or prospective donor has made, amended, or revoked an anatomical gift.

This section does not require states to create or contract for the creation of a donor registry. It merely gives them discretion to do so. Also, this section does not bar the creation of a private donor registry although it does

require private registries to meet the requirements in subsection (c) and (d) [(2) and (3)].

Although every donor registry meeting the requirements of Section 20 [this section] would also meet the Section 2(8) [§ 39-3402(8)] definition of a donor registry, the definition of a donor registry in Section 2(8) [§ 39-3402(8)] is not tied to meeting the Section 20 [this section] requirements. This was purposeful. A donor registry as a place to make an anatomical gift should be broadly defined to respect the wishes of donors who make an anatomical gift on a registry that should, but failed to, comply with this section.

**39-3422. Effect of anatomical gift on advance health care directive. — (1) In this section:**

- (a) "Advance health care directive" means a power of attorney for health care or a record signed or authorized by a prospective donor containing the prospective donor's direction concerning a health care decision for the prospective donor.
- (b) "Declaration" means a record signed by a prospective donor specifying the circumstances under which a life support system may be withheld or withdrawn from the prospective donor.
- (c) "Health care decision" means any decision regarding the health care of the prospective donor.

(2) If a prospective donor has a declaration or advance health care directive and the terms of the declaration or directive and the express or implied terms of a potential anatomical gift are in conflict with regard to the administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy, the prospective donor's attending physician and prospective donor shall confer to resolve the conflict. If the prospective donor is incapable of resolving the conflict, an agent acting under the prospective donor's declaration or directive, or, if none or the agent is not reasonably available, another person authorized by law other than this chapter to make health care decisions on behalf of the prospective donor, shall act for the donor to resolve the conflict. The conflict must be resolved as expeditiously as possible. Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under section 39-3409, Idaho Code. Before resolution of the conflict, measures necessary to ensure the medical suitability of the part may not be withheld or withdrawn from the prospective donor if withholding or withdrawing the measures is not contraindicated by appropriate end-of-life care.

**History.**

I.C., § 39-3422, as added by 2007, ch. 30, § 2, p. 61; am. 2009, ch. 176, § 1, p. 556.

### STATUTORY NOTES

#### Amendments.

The 2009 amendment, by ch. 176, in subsection (1)(a), inserted “or authorized”; in subsection (1)(c), deleted “made” following “any decision”; and rewrote subsection (2), which formerly read: “If a prospective donor has a

declaration or advance health care directive, measures necessary to ensure the medical suitability of an organ for transplantation or therapy may not be withheld or withdrawn from the prospective donor, unless the declaration expressly provides to the contrary.”

### OFFICIAL COMMENT

This section differs from Section 14(c) [§ 39-3415(3)]. That section provides that measures necessary to ensure the medical suitability of a part not be withdrawn while an examination is being made to determine whether an individual who has been referred to a procurement organization has a part that could be the subject of an anatomical gift. It applies when a patient on life support systems is referred to a procurement organization for evaluation as a prospective donor as required under federal rules relating to required referrals. If, following such an examination, it is determined by the procurement organization that the individual has a part that could be the subject of an anatomical gift, the individual is a prospective donor under this section unless the individual had signed a refusal. In light of the definition of a prospective donor, see Section 2(22) [§ 39-3402(22)], this section also applies to a donor near death who has medically suitable organs for transplantation as determined by the organ procurement organization.

If a prospective donor made an anatomical gift under Section 5 [§ 39-3405] or the prospective donor's family contemplates making an anatomical gift under Section 9 [§ 39-3409] and the prospective donor signed an advance health-care directive or declaration expressing the intent to have life support systems withdrawn, a potential conflict arises between that intent and the need to administer certain measures to ensure the medical suitability of any part that could be the subject of an anatomical gift. For example, the prospective donor may have expressed the intent to have a respirator withdrawn in a declaration, yet it may be necessary to continue a respirator to assure the medical suitability of a donated part.

If this conflict exists, it becomes necessary to determine the prospective donor's actual or

likely intent to resolve it. Of course, if the prospective donor is able to do so, the prospective donor's decision controls. If the prospective donor is unable to resolve the conflict, it is resolved by the prospective donor's agent. If there is no agent, the conflict is resolved by another individual authorized by other law to make health-care decisions on the prospective donor's behalf. While the consultation occurs, measures necessary to ensure the medical suitability of the part shall continue to be administered unless the administration would be contraindicated by appropriate end of life care.

The decision of the prospective donor, agent, or other individual whether or not to withdraw the life support system is final. This process recognizes that it is the intent of the prospective donor as determined by the prospective donor or those designated by the prospective donor or by law that is paramount, even though a decision to withdraw life support may result in the loss of parts for transplantation or therapy.

The conflict should be resolved as expeditiously as possible. Furthermore to assist in resolving the conflict and providing the decision maker with necessary medical information, the decision maker shall consult with the prospective donor's attending physician, presumably about all medical matters relating how the continued administration or withdrawal of the measures would affect the patient. Any consultation may also include the appropriate procurement organization and any other person authorized under Section 9 [§ 39-3409] to make an anatomical gift. The procurement organization presumably provides information relating to why the continued administration of the measure is necessary, the length of time they would be necessary, and other relevant information.

**39-3423. Cooperation between coroner and procurement organization.** — (1) A coroner shall cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research or education.

(2) A part may not be removed from the body of a decedent under the jurisdiction of a coroner for transplantation, therapy, research or education unless the part is the subject of an anatomical gift and the removal will not



interfere with any autopsy or investigation. The body of a decedent under the jurisdiction of the coroner may not be delivered to a person for research or education unless the body is the subject of an anatomical gift. This subsection does not preclude a coroner from performing the medicolegal investigation upon the body or parts of a decedent under the jurisdiction of the coroner.

**History.**

I.C., § 39-3423, as added by 2007, ch. 30,  
§ 2, p. 61.

**OFFICIAL COMMENT**

This section includes a number of provisions designed to allow for the cooperation of procurement organizations and [coroners] [medical examiners] in obtaining bodies and parts that otherwise are the subject of an anatomical gift. Unlike prior law, this section does not empower [coroners] [medical examiners] to make an anatomical gift of the body

or parts of a decedent. However, and although quite rare, if the [coroner] [medical examiner] is the person with authority to dispose of the decedent's body and has the priority to make a gift under Section 9 [§ 39-3409], the [coroner] [medical examiner] could make an anatomical gift under Section 10 [§ 39-3410].

**39-3424. Uniformity of application and construction.** — In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**History.**

I.C., § 39-3424, as added by 2007, ch. 30,  
§ 2, p. 61.

**39-3425. Relation to electronic signatures in global and national commerce act.** — This chapter modifies, limits and supersedes the electronic signatures in global and national commerce act, 15 U.S.C. section 7001 et seq., but does not modify, limit or supersede section 101(a) of that act or authorize electronic delivery of any of the notices described in section 103(b) of that act.

**History.**

I.C., § 39-3425, as added by 2007, ch. 30,  
§ 2, p. 61.

**STATUTORY NOTES****Federal References.**

Section 101 of the electronic signatures in global and national commerce act is codified

as 15 USCS § 7001. Section 103 of that act is codified as 15 USCS § 7003.



CHAPTER 35

IDAHO CERTIFIED FAMILY HOMES

- SECTION.  
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39-3572 — 39-3574. [Repealed.]  
39-3575. [Amended and Redesignated.]  
39-3576. Resident rights. [Repealed.]  
39-3577 — 39-3580. [Amended and Redesignated.]

**39-3501. Legislative intent and declaration.** — The purpose of a certified family home in Idaho is to provide a homelike alternative designed to allow individuals to remain in a more normal family-styled living environment, usually within their own community. Certified family homes provide a home to individuals who are elderly, individuals with a mental illness, developmental disabilities, physical disabilities or to those unable to live alone, and whose mental, emotional and physical condition can be met by the care provider to delay the need for more expensive congregate care or other institutional care. The home must obtain a waiver under section 39-1301A, Idaho Code, to care for two (2) persons requiring care described in section 39-1301(b), Idaho Code.

It is the intent of the legislature that certified family homes be available to meet the needs of those residing in these homes while providing a more homelike environment focused on integrated community living rather than other more restrictive environments and by recognizing the capabilities of individuals to direct their own care.

The certified family home shall be operated by a provider who has demonstrated the knowledge and experience required to provide safe and appropriate services to each resident of the certified family home. The provider shall protect each resident's rights and provide appropriate services to meet each resident's needs. For those residents whose care is not paid with public funds, the certified family home shall conduct an objective, individualized assessment to determine resident needs, develop a comprehensive negotiated plan of service to meet those needs, deliver appropriate services to meet resident needs and ensure resident rights are honored.

The department is responsible for monitoring and enforcing the provisions of this chapter. This responsibility includes, but is not limited to: monitoring the condition of the certified family home, ensuring that each resident has an individualized written plan of care that includes activities of daily living and support services, and managing enforcement procedures when violations occur.

**History.**

I.C., § 39-3501, as added by 2005, ch. 280,  
§ 34, p. 880.

**STATUTORY NOTES****Prior Laws.**

Former § 39-3501, which comprised I.C., § 39-3501, as added by 1993, ch. 374, § 1, p. 1353; am. 1996, ch. 207, § 24, p. 631; am. 2000, ch. 274, § 64, p. 799, was repealed by S.L. 2005, ch. 280, § 1.

**Compiler's Notes.**

Another former § 39-3501 was amended and redesignated as § 41-253 by S.L. 1982, ch. 120, § 1, effective March 22, 1982.

**39-3502. Definitions.** — As used in this chapter:

(1) "Abuse" means a nonaccidental act of sexual, physical or mental mistreatment or injury of a resident through the action or inaction of another individual.

(2) "Activities of daily living" means the performance of basic self-care activities in meeting an individual's needs to sustain him in a daily living environment.

(3) "Adult" means a person who has attained the age of eighteen (18) years.

(4) "Advocate" means an authorized or designated representative of a program or organization operating under federal or state mandate to represent the interests of a population group served by the certified family home.

(5) "Assessment" means the conclusion reached using uniform criteria which identifies resident strengths, weaknesses, risks and needs, to include functional, medical and behavioral. The assessment criteria shall be developed by the department and the advisory council.

(6) "Board" means the board of health and welfare.

(7) "Care provider" means the adult member of the home family responsible for maintaining the certified family home. The care provider and the legal owner may not necessarily be the same person. The care provider must live in the home.

(8) "Certified family home" means a family-styled living environment in which two (2) or fewer adults live who are not able to reside in their own home and who require care, help in daily living, protection and security, supervision, personal assistance and encouragement toward independence.

(9) "Certifying agent" means a person acting under the authority of the department to participate in the certification, inspection, and regulation of a family home.

(10) "Chemical restraint" means any drug that is used for discipline or convenience and not required to treat medical symptoms.

(11) "Client" means any person who receives financial aid and/or services from an organized program of the department.



(12) "Core issues" means abuse, neglect, exploitation, inadequate care, inoperable fire detection or extinguishing systems with no fire watch in place pending the correction of the system, and situations in which advocates, representatives and department certification staff are denied access to records, residents, or the certified family home.

(13) "Department" means the Idaho department of health and welfare.

(14) "Director" means the director of the Idaho department of health and welfare.

(15) "Exploitation" means the misuse of a vulnerable adult's funds, property or resources by another person for profit or advantage.

(16) "Governmental unit" means the state, any county, any city, other political subdivision, or any department, division, board or other agency thereof.

(17) "Home family" means all individuals related by blood, marriage, or adoption, other than residents, residing in the certified family home.

(18) "Inadequate care" occurs when a certified family home fails to provide the services required to meet the terms of the negotiated plan of service or provide for room, board, activities of daily living, supervision, first aid, assistance and monitoring of medications, emergency intervention, coordination of outside services, or a safe living environment; or engages in violations of residents' rights or takes residents who have been admitted in violation of the provisions of section 39-3507, Idaho Code.

(19) "Neglect" means failure to provide food, clothing, shelter, or medical care necessary to sustain life and health of a resident.

(20) "Negotiated service agreement" means the agreement reached by the resident or their representative, if applicable, and the facility, based on the assessment, physician's orders if any, admission records if any, and desires of the resident, and which outlines services to be provided and the obligations of the certified family home and the resident.

(21) "Personal assistance" means the provision by the certified family home of one (1) or more of the following services:

(a) Assisting the resident with activities of daily living.

(b) Arranging for supportive services.

(c) Being aware of the resident's general whereabouts.

(d) Monitoring the activities of the resident while on the premises of the facility to ensure the resident's health, safety and well-being.

(22) "Political subdivision" means a city or county.

(23) "Representative of the department" means an employee of the department.

(24) "Resident" means an adult who lives in a certified family home and who requires personal assistance or supervision.

(25) "Room and board" means lodging and meals.

(26) "Substantial compliance" means a certified family home has no core issue deficiencies.

(27) "Substitute caregiver" means an adult designated by the certified family home provider to provide care and services in a certified family home in the temporary absence of the regular care provider.

(28) "Supervision" means administrative activity which provides the following: protection, guidance, knowledge of the resident's whereabouts



and monitoring activities. The care provider is responsible for providing appropriate supervision based on each resident's negotiated service agreement.

(29) "Supportive services" means the specific services that are provided to the resident in the community and that are required by the negotiated service agreement or reasonably requested by the resident.

**History.**

I.C., § 39-3502, as added by 1993, ch. 374, § 1, p. 1353; am. 1994, ch. 284, § 2, p. 887;

am. 1996, ch. 207, § 25, p. 631; am. 2000, ch. 274, § 65, p. 799; am. 2005, ch. 280, § 35, p. 880; am. 2007, ch. 90, § 20, p. 246.

**STATUTORY NOTES**

**Cross References.**

Board of health and welfare, § 56-1005.

**Prior Laws.**

Former § 39-3502, which comprised S.L. 1970, ch. 190, § 2, was repealed by S.L. 1974, ch. 39, § 1.

**Amendments.**

The 2007 amendment, by ch. 90, added the present subsection (3) designation and redesignated former subsections (3) through (28) as (4) through (29).

**39-3503. Payment agreements.** — Each care provider shall negotiate a written, signed and dated agreement between the care provider and a resident specifying the amount of monthly payment to be paid by the resident and the method for payment.

**History.**

I.C., § 39-3575, as added by 1994, ch. 284,

§ 1, p. 887; am. 2000, ch. 274, § 113, p. 799; am. and redesign. 2005, ch. 280, § 53, p. 880.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-3503, which comprised I.C., § 39-3503, as added by 1993, ch. 374, § 1, p. 1353; am. 1994, ch. 284, § 3, p. 887; am. 1996, ch. 207, § 26, p. 631; am. 2000, ch. 274, § 66, p. 799, was repealed by S.L. 2005, ch. 280, § 1.

Another former § 39-3503, which comprised S.L. 1970, ch. 190, § 3 was repealed by S.L. 1974, ch. 39, § 1.

**Compiler's Notes.**

This section was formerly compiled as § 39-3575 and was amended and redesignated as this section by § 53 of S.L. 2005, ch. 280.

**39-3504. Physical and environmental standards.** — Standards shall be developed through the regulatory process by the department to assure a safe, sanitary and comfortable environment for residents of certified family homes.

**History.**

I.C., § 39-3578, as added by 1994, ch. 284,

§ 1, p. 887; am. 2000, ch. 274, § 116, p. 799; am. and redesign. 2005, ch. 280, § 55, p. 880.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-3504, which comprised I.C., § 39-3504, as added by 1993, ch. 374, § 1, p. 1353, was repealed by S.L. 2005, ch. 280, § 1.

**Compiler's Notes.**

This section was formerly compiled as § 39-

3578 and was amended and redesignated as this section by § 55 of S.L. 2005, ch. 280.

Another former § 39-3504, as enacted by S.L. 1970, ch. 190, § 4, was amended and redesignated as § 41-254 by S.L. 1982, ch. 120, § 2, effective March 22, 1982.

**39-3505. Rules.** — The board shall have the power and it shall be its duty to promulgate appropriate rules necessary to implement and enforce the standards for certified family homes pursuant to this act including, but not limited to, the following:

(1) A home shall be certified for no more than two (2) adults, however, upon an application by the owner and upon a finding by the department that residents can be cared for safely and appropriately based on the residents' specific needs, the department may authorize not more than four (4) adults to be placed in a certified family home which is owner-occupied and which applies to the department for the authorization. Certification as a four (4) resident certified family home shall not be transferable to another person or entity. Four (4) resident certified family homes shall be subject to all statutes and rules governing certified family homes but shall not be subject to the residential care facility administrator licensing requirements of chapter 42, title 54, Idaho Code, or section 39-3340, Idaho Code, licensing of residential care or assisted living facilities for individuals with mental illness, developmental disabilities or physical disabilities. This provision implementing four (4) resident certified family homes shall be effective on July 1, 2001. The department shall promulgate rules for four (4) resident certified family homes through the negotiated rulemaking process. Nothing in this subsection shall be construed to authorize increased group size for providers of any form of care other than certified family homes.

(2) A care provider is the adult who has applied to be the care provider and who is responsible for client care and following the laws and rules of the certified family home program.

(3) A home cannot be approved as certified for family home care if it also provides room and board for other persons. A waiver may be granted by the department where a married couple wishes to live together in the same certified family home and one (1) member of the couple does not require certified family home care.

(4) A home cannot be approved as a certified family home and for child foster care at the same time, unless a waiver is granted by the department.

(5) The care provider must have sufficient resources to maintain the home and the services offered.

(6) Information obtained by the care provider shall be held confidential except to representatives of the department to provide services or determine compliance with this chapter or upon consent of the individual or his legal guardian.

(7) Recordkeeping and reporting requirements as may be deemed necessary.

(8) Requirements to assure the safety and adequate care of residents to include the recording of incidents and accidents.

(9) Management of medications.

(10) Inspections. The certifying agency may inspect and investigate certified family homes as necessary to determine compliance with this chapter and the department's rules.

(11) Revocation of certification or other enforcement actions.

**History.**

I.C., § 39-3561, as added by 1994, ch. 284, § 1, p. 887; am. 2000, ch. 274, § 101, p. 799;

am. 2003, ch. 201, § 3, p. 569; am. and redesign. 2005, ch. 280, § 43, p. 880.

**STATUTORY NOTES****Prior Laws.**

Former § 39-3505, which comprised I.C., § 39-3505, as added by 1993, ch. 374, § 1, p. 1353; am. 1996, ch. 207, § 27, p. 631; am. 2000, ch. 274, § 67, p. 799, was repealed by S.L. 2005, ch. 280, § 1.

Another former § 39-3505, as enacted by S.L. 1970, ch. 190, § 5, was amended and redesignated as § 41-255 by S.L. 1982, ch. 120, § 3, effective March 22, 1982.

**Compiler's Notes.**

This section was formerly compiled as § 39-3561 and was amended and redesignated as this section by § 43 of S.L. 2005, ch. 280.

The term "this act" in the introductory paragraph refer to S.L. 1994, ch. 284, which is codified as §§ 39-3502 to 39-3505, 39-3510, 39-3513, 39-3520 to 39-3526, and 39-3528.

**39-3506. State certification to supersede local regulation.** — The provisions of this chapter, and the rules promulgated pursuant to this chapter, shall supersede any program of any political subdivision of the state which licenses or sets standards for certified family homes.

**History.**

I.C., § 39-3506, as added by 1993, ch. 374,

§ 1, p. 1353; am. 2000, ch. 274, § 68, p. 799; am. 2005, ch. 280, § 36, p. 880.

**STATUTORY NOTES****Compiler's Notes.**

Former § 39-3506, as enacted by S.L. 1970, ch. 190, § 6, was amended and redesignated

as § 41-256 by S.L. 1982, ch. 120, § 4, effective March 22, 1982.

**39-3507. Admissions.** — A certified family home shall not admit or retain any resident requiring a level of services or type of service which the certified family home does not have the time or appropriate skills to provide.

**History.**

I.C., § 39-3507, as added by 1993, ch. 374, § 1, p. 1353; am. 1996, ch. 207, § 28, p. 631;

am. 2000, ch. 274, § 69, p. 799; am. 2005, ch. 280, § 37, p. 880.

**STATUTORY NOTES****Compiler's Notes.**

Former § 39-3507, as enacted by S.L. 1970, ch. 190, § 7, was amended and redesignated

as § 41-257 by S.L. 1982, ch. 120, § 5, effective March 22, 1982.

**39-3508. Assessment.** — The department shall employ uniform assessment criteria to assess functional and cognitive disability. The conclusions shall be deemed the assessment and shall be used to provide appropriate placement and funding for service needs.

**History.**

I.C., § 39-3508, as added by 1996, ch. 207, § 30, p. 631; am. 2005, ch. 280, § 38, p. 880.



## STATUTORY NOTES

**Prior Laws.**

Former § 39-3508, which comprised I.C., § 39-3508, as added by 1993, ch. 374, § 1, p. 1353, was repealed by S.L. 1996, ch. 207, § 29, effective July 1, 1996.

**Compiler's Notes.**

Another former § 39-3508, as enacted by S.L. 1970, ch. 190, § 8, was amended and redesignated as § 41-258 by S.L. 1982, ch. 120, § 6, effective March 22, 1982.

**39-3509. Negotiated service agreement or plan of service.** — Each resident shall be provided a negotiated service agreement or plan of service to provide for coordination of services and for guidance of the care provider where the person resides. Upon completion, the agreement shall clearly identify the resident and describe the services to be provided to the resident and how such services are to be delivered.

**History.**

I.C., § 39-3509, as added by 1996, ch. 207, § 32, p. 631; am. 2005, ch. 280, § 39, p. 880.

## STATUTORY NOTES

**Prior Laws.**

Former § 39-3509, which comprised I.C., § 39-3509, as added by 1993, ch. 374, § 1, p. 1353, was repealed by S.L. 1996, ch. 207, § 31, effective July 1, 1996.

**Compiler's Notes.**

Another former § 39-3509, as enacted by S.L. 1970, ch. 190, § 9, was amended and redesignated as § 41-259 by S.L. 1982, ch. 120, § 7, effective March 22, 1982.

**39-3510. Separability.** — If any section, subsection, paragraph, sentence, or any other part of this chapter is adjudged unconstitutional or invalid, such judgment shall not affect, impair, or invalidate the remainder of this chapter, but shall be confined to this section, subsection, paragraph, sentence, or any other part of this chapter directly involved in the controversy in which the judgment has been rendered.

**History.**

I.C., § 39-3579, as added by 1994, ch. 284,

§ 1, p. 887; am. and redesign. 2005, ch. 280, § 56, p. 880.

## STATUTORY NOTES

**Prior Laws.**

Former § 39-3510, which comprised I.C., § 39-3510, as added by 1993, ch. 374, § 1, p. 1353; am. 1996, ch. 207, § 33, p. 631; am. 2000, ch. 274, § 70, p. 799, was repealed by S.L. 2005, ch. 280, § 1.

3579 and was amended and redesignated as this section by § 56 of S.L. 2005, ch. 280.

Another former § 39-3510, as enacted by S.L. 1970, ch. 190, § 10 was amended and redesignated as § 41-260 by S.L. 1982, ch. 120, § 8, effective March 22, 1982.

**Compiler's Notes.**

This section was formerly compiled as § 39-

**39-3511. Advisory council.** — The department shall establish a state level advisory council consisting of twenty (20) members appointed by the organizations and/or agencies represented on the council. The chairman of the council shall be elected from the membership. The members of the council shall be determined by the bylaws of the council.

**History.**

I.C., § 39-3511, as added by 2005, ch. 280, § 40, p. 880; am. 2011, ch. 123, § 4, p. 346.

**STATUTORY NOTES****Prior Laws.**

Former § 39-3511, which comprised I.C., § 39-3511, as added by 1993, ch. 374, § 1, p. 1353; am. 1996, ch. 207, § 34, p. 631; am. 2000, ch. 274, § 71, p. 799, was repealed by S.L. 2005, ch. 280, § 1.

**Amendments.**

The 2011 amendment, by ch. 123, deleted the subsection (1) designation from the first paragraph; in the first sentence, substituted "twenty (20) members" for "twenty-two (22) members" in the last sentence, substituted "shall be determined by the bylaws of the council" for "shall be"; deleted former para-

graphs (1)(a) through (1)(j), which were a detailed listing of members of the council; and deleted former subsection (2), which read: "Members who are not state agency representatives shall serve three (3) year terms. A vacancy shall be filled for the remainder of the unexpired term from the same class of persons represented by the outgoing member."

**Compiler's Notes.**

Another former § 39-3511 was amended and redesignated as § 41-261 by S.L. 1982, ch. 120, § 9, effective March 22, 1982.

**39-3512. Application of provisions.** — Any individual providing care and housing commercially to the elderly, or individuals with mental illness, developmental disabilities, or physical disabilities shall at a minimum meet the requirements of this chapter or other provision of law governing care and housing for the elderly, individuals with mental illness, developmental disabilities, or physical disabilities if those provisions are more restrictive.

**History.**

I.C., § 39-3580, as added by 1996, ch. 207,

§ 49, p. 631; am. 2000, ch. 274, § 117, p. 799; am. and redesign. 2005, ch. 280, § 57, p. 880.

**STATUTORY NOTES****Prior Laws.**

Former § 39-3512, which comprised I.C., § 39-3512, as added by 1993, ch. 374, § 1, p. 1353, was repealed by S.L. 1996, ch. 207, § 35, effective July 1, 1996.

3580 and was amended and redesignated as this section by § 57 of S.L. 2005, ch. 280.

Another former § 39-3512, as enacted by S.L. 1970, ch. 190, § 2, was amended and redesignated as § 41-262 by S.L. 1982, ch. 120, § 10, effective March 22, 1982.

**Compiler's Notes.**

This section was formerly compiled as § 39-

**39-3513. Training.** — The department shall assure that care providers receive, at a minimum, training which shall include the rights of the resident, and a basic understanding of the psychosocial and physical needs of residents to be served. The department will require annual continuing education requirements for care providers as defined by rules promulgated pursuant to this chapter.

**History.**

I.C., § 39-3577, as added by 1994, ch. 284,

§ 1, p. 887; am. 2000, ch. 274, § 115, p. 799; am. and redesign. 2005, ch. 280, § 54, p. 880.

**STATUTORY NOTES****Prior Laws.**

Former § 39-3513, which comprised I.C., § 39-3513, as added by 1993, ch. 374, § 1, p.

1353; am. 1996, ch. 207, § 36, p. 631; am. 2000, ch. 274, § 72, p. 799, was repealed by S.L. 2005, ch. 280, § 1.

**Compiler's Notes.**

This section was formerly compiled as § 39-3577 and was amended and redesignated as this section by § 54 of S.L. 2005, ch. 280.

Another former § 39-3513, as enacted by S.L. 1970, ch. 190, § 13, was amended and redesignated as § 41-263 by S.L. 1982, ch. 120, § 11, effective March 22, 1982.

**39-3514 — 39-3515. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

The following sections were repealed by S.L. 2005, ch. 280, § 1:

39-3514. Termination of admission agreements. [I.C., § 39-3514, as added by 1993, ch. 374, § 1, p. 1353.

39-3515. Admission of records. [I.C., § 39-3515, as added by 1993, ch. 374, § 1, p. 1353; am 1996, ch. 207, § 37, p. 631; am 2000, ch. 274, § 73, p. 799.]

Another former § 39-3514, as enacted by S.L. 1970, ch. 190, § 14, was amended and redesignated as § 41-264 by S.L. 1982, ch. 120, § 12, effective March 22, 1982.

Another former § 39-3515, as enacted by S.L. 1970, ch. 190, § 16, was amended and redesignated as § 41-265 by S.L. 1982, ch. 120, § 13, effective March 22, 1982.

**39-3516. Resident rights.** — A certified family home must protect and promote the rights of each resident, including each of the following rights:

(1) Resident records. Each certified family home must maintain and keep current a record of the following information on each resident:

(a) A copy of the resident's current negotiated plan of service and physician's history and physical that includes current medications and special treatments.

(b) Written acknowledgement that the resident has received copies of the rights.

(c) A record of all personal property and funds which the resident has entrusted to the certified family home, including copies of receipts for the property.

(d) Information about any specific health problems of the resident which may be useful in a medical emergency.

(e) The name, address and telephone number of an individual identified by the resident who should be contacted in the event of an emergency or death of the resident.

(f) Any other health-related, emergency or pertinent information which the resident requests the certified family home to keep on record.

(g) The current admission agreement between the resident and the certified family home.

(2) Privacy. Each resident must be assured the right to privacy with regard to accommodations, medical and other treatment, written and telephone communications, visits, and meetings of family and resident groups.

(3) Humane care and environment (dignity and respect).

(a) Each resident shall have the right to humane care and a humane environment, including the following:

(i) The right to a diet which is consistent with any religious or health-related restrictions.

(ii) The right to refuse a restricted diet.

(iii) The right to a safe and sanitary living environment.

(b) Each resident shall have the right to be treated with dignity and respect, including:



- (i) The right to be treated in a courteous manner by staff.
  - (ii) The right to receive a response from the certified family home to any request of the resident within a reasonable time.
- (4) Personal possessions. Each resident shall have the right to:
- (a) Wear his own clothing.
  - (b) Determine his own dress or hair style.
  - (c) Retain and use his own personal property in his own living area so as to maintain individuality and personal dignity.
  - (d) Be provided a separate storage area in his own living area and at least one (1) lockable cabinet or drawer for keeping personal property if requested by the resident.
- (5) Personal funds. Residents whose board and care is paid for by public assistance shall retain, for their personal use, the difference between their total income and the applicable board and care allowance established by department rules.
- (a) A certified family home shall not require a resident to deposit his personal funds with the certified family home.
  - (b) Once the certified family home accepts the written authorization of the resident, the certified family home must hold, safeguard and account for such personal funds under a system established and maintained by the certified family home in accordance with this subparagraph.
- (6) Management of personal funds. Upon a certified family home's acceptance of written authorization of a resident, the certified family home must manage and account for the personal funds of the resident deposited with the certified family home. Upon the death of a resident with such an account, the certified family home must promptly convey the resident's personal funds, and a final accounting of such funds, to the individual administering the resident's estate. For clients of the department, the remaining balance of funds shall be refunded to the department.
- (7) Access and visitation rights. Each certified family home must permit:
- (a) Immediate access to any resident by any representative of the department, by the state ombudsman for the elderly or his designee, or by the resident's individual physician.
  - (b) Immediate access to a resident, subject to the resident's right to deny or withdraw consent at any time, by immediate family or other relatives.
  - (c) Immediate access to a resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident.
  - (d) Reasonable access to a resident by any entity or individual that provides health, social, legal or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.
  - (e) Access by protection and advocacy system. The certified family home shall permit advocates and representatives of the protection and advocacy system designated by the governor pursuant to 42 U.S.C. 15043 and 42 U.S.C. 10801 et seq. access to residents, certified family homes and records in accordance with applicable federal law and regulations.
- (8) Employment. Each resident shall have the right to refuse to perform services for the certified family home except as contracted for by the resident and the care provider of the home. If the resident is hired by the certified

family home to perform services as an employee of the home, the wage paid to the resident shall be consistent with state and federal law.

(9) Confidentiality. Each resident shall have the right to confidentiality of personal and clinical records.

(10) Freedom from abuse, neglect and restraints. Each resident shall have the right to be free from physical, mental or sexual abuse, neglect, corporal punishment, involuntary seclusion, and any physical or chemical restraints.

(11) Freedom of religion. Each resident shall have the right to practice the religion of his choice or to abstain from religious practice. Residents shall also be free from the imposition of the religious practices of others.

(12) Control and receipt of health-related services. Each resident shall have the right to control his receipt of health-related services, including:

(a) The right to retain the services of his own personal physician, dentist and other health care professionals.

(b) The right to select the pharmacy or pharmacist of his choice.

(c) The right to confidentiality and privacy concerning his medical or dental condition and treatment.

(13) Grievances. Each resident shall have the right to voice grievances with respect to treatment or care that is (or fails to be) furnished, without discrimination or reprisal for voicing the grievances and the right to prompt efforts by the certified family home to resolve grievances the resident may have, including those with respect to the behavior of other residents.

(14) Participation in other activities. Each resident shall have the right to participate in social, religious and community activities that do not interfere with the rights of other residents in the certified family home.

(15) Examination of home inspection reports. Each resident shall have the right to examine, upon reasonable request, the results of the most recent home inspection of the certified family home conducted by the department with respect to the certified family home and any plan of correction in effect with respect to the certified family home.

**History.**  
I.C., § 39-3516, as added by 1993, ch. 374,  
§ 1, p. 1353; am. 1996, ch. 207, § 38, p. 631;

am. 2000, ch. 274, § 74, p. 799; am. 2005, ch.  
280, § 41, p. 880.

STATUTORY NOTES

**Cross References.**  
Ombudsman for the elderly, § 67-2403.

as § 41-266 by S.L. 1982, ch. 120, § 14,  
effective March 22, 1982.

**Compiler's Notes.**  
Former § 39-3516, as enacted by S.L. 1970,  
ch. 190, § 17, was amended and redesignated

The words enclosed in parentheses so ap-  
peared in the law as enacted.

39-3517, 39-3518. [Repealed.]

STATUTORY NOTES

**Prior Laws.**  
Former § 39-3517, as enacted by S.L. 1970,  
ch. 190, § 18, was amended and redesignated  
as § 41-267 by S.L. 1982, ch. 120, § 15,

effective March 22, 1982, and repealed by S.L.  
1988, ch. 247, § 1.  
Former § 39-3518, which comprised 1970,  
ch. 190, § 19, p. 547; am. 1974, ch. 39, § 49, p.

1023; am. 1976, ch. 51, § 14, p. 152, was repealed by S.L. 1982, ch. 120, § 16.

**Compiler's Notes.**

The following sections were repealed by S.L. 2005, ch. 280, § 1:

39-3517. Notice of rights. [I.C., § 39-3517, as added by 1993, ch. 374, § 1, p. 1353.]

39-3518. Facility response to incidents and complaints. [I.C., § 39-3518, as added by 1993, ch. 374, § 1, p. 1353; am. 2000, ch. 274, § 75, p. 799.]

**39-3519. Access by advocates and representatives.** — A certified family home shall permit advocates and representatives of community legal services programs, including the protection and advocacy system pursuant to 42 U.S.C. 15043 and 42 U.S.C. 10801 et seq., whose purposes include rendering assistance without charge to residents, to have access to the certified family home at reasonable times.

**History.**

I.C., § 39-3519, as added by 1993, ch. 374,

§ 1, p. 1353; am. 2000, ch. 274, § 76, p. 799; am. 2005, ch. 280, § 42, p. 880.

**STATUTORY NOTES**

**Compiler's Notes.**

Former § 39-3519, as enacted by S.L. 1970, ch. 190, § 20, was amended and redesignated

as § 41-269 by S.L. 1982, ch. 120, § 18, effective March 22, 1982.

**39-3520. Application for certification.** — An application for certification shall be made to regional offices of the department upon forms provided by the department and shall contain such information as the department reasonably requires which will include a background check and fingerprinting through the department. Following receipt of an application, the department shall conduct a study, including a visit to the home, to determine the capability of the provider to provide care as a certified family home.

**History.**

I.C., § 39-3562, as added by 1994, ch. 284, § 1, p. 887; am. 2000, ch. 274, § 102, p. 799;

am. 2000, ch. 469, § 97, p. 1450; am. and redesign. 2005, ch. 280, § 44, p. 880.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-3520, which comprised I.C., § 39-3520, as added by 1993, ch. 374, § 1, p. 1353; am. 1996, ch. 207, § 39, p. 631; am. 2000, ch. 274, § 77, p. 799, was repealed by S.L. 2005, ch. 280, § 1.

the last sentence, substituted "to provide care as a certified family home" for "to provide adult foster care".

The 2000 amendment, by ch. 469, § 97, at the end of the first sentence, substituted "state police" for "department of law enforcement".

**Amendments.**

This section was amended by two 2000 acts which appear to be compatible and have been compiled together.

The 2000 amendment, by ch. 274, § 102, in

**Compiler's Notes.**

This section was formerly compiled as § 39-3562 and was amended and redesignated as this section by § 44 of S.L. 2005, ch. 280.

**39-3521. Issuance and renewal of certification.** — Each certificate shall be issued only for the home and provider named in the application and shall not be transferable or assignable. Each certified family home is required to renew its certification annually. The application for renewal shall be filed with the regional office of the department within thirty (30)



days prior to the date of expiration. The existing certificate, unless suspended or revoked, shall remain in force and effect until the department has acted upon the application renewal when such application for renewal is timely filed.

**History.**

I.C., § 39-3563, as added by 1994, ch. 284,

§ 1, p. 887; am. 2000, ch. 274, § 103, p. 799; am. and redesign. 2005, ch. 280, § 45, p. 880.

**STATUTORY NOTES****Prior Laws.**

Former § 39-3521, which comprised I.C., § 39-3521, as added by 1993, ch. 374, § 1, p. 1353; am. 1996, ch. 207, § 40, p. 631; am. 2000, ch. 274, § 78, p. 799, was repealed by S.L. 2005, ch. 280, § 1.

**Compiler's Notes.**

This section was formerly compiled as § 39-3563 and was amended and redesignated as this section by § 45 of S.L. 2005, ch. 280.

**39-3522. Provisional certification.** — Upon initial investigation, should an applicant for a certificate be unable to meet a standard because of conditions that are unlikely to endure beyond six (6) months, the department may grant a provisional certificate pending the satisfactory correction of all deficiencies and provided that the deficiencies do not jeopardize the health and safety of residents. No more than one (1) provisional certificate shall be issued to the same certified family home in any twelve (12) month period.

**History.**

I.C., § 39-3564, as added by 1994, ch. 284,

§ 1, p. 887; am. 2000, ch. 274, § 104, p. 799; am. and redesign. 2005, ch. 280, § 46, p. 880.

**STATUTORY NOTES****Prior Laws.**

Former § 39-3522, which comprised I.C., § 39-3522, as added by 1993, ch. 374, § 1, p. 1353; am. 1996, ch. 207, § 41, p. 631; am. 2000, ch. 274, § 79, p. 799, was repealed by S.L. 2005, ch. 280, § 1.

**Compiler's Notes.**

This section was formerly compiled as § 39-3564 and was amended and redesignated as this section by § 46 of S.L. 2005, ch. 280.

**39-3523. Denial or revocation of a certificate.** — The department may deny the issuance of a certificate or revoke any certificate when persuaded by a preponderance of evidence that such conditions exist as to endanger the health or safety of any resident, or when the home is not in substantial compliance with the provisions of this chapter or rules promulgated pursuant to this chapter.

**History.**

I.C., § 39-3565, as added by 1994, ch. 284,

§ 1, p. 887; am. and redesign. 2005, ch. 280, § 47, p. 880.

**STATUTORY NOTES****Prior Laws.**

Former § 39-3523, which comprised I.C., § 39-3523, as added by 2004, ch. 329, § 1, p. 985, was repealed by S.L. 2005, ch. 280, § 1.

Another former § 39-3523, which comprised I.C., § 39-3523, as added by 1993, ch.

374, § 1, p. 1353, was repealed by S.L. 1996, ch. 207, § 42, effective July 1, 1996.

**Compiler's Notes.**

This section was formerly compiled as § 39-3565 and was amended and redesignated as this section by § 47 of S.L. 2005, ch. 280.

**39-3524. Procedure for denial or revocation of a certificate. —** Immediately upon the denial of any application for a certificate, or the revocation of a certificate, the department shall notify the applicant in writing. The proceedings shall be conducted in accordance with the Idaho administrative procedure act and the department's rules.

**History.** § 1, p. 887; am. and redesign. 2005, ch. 280,  
I.C., § 39-3566, as added by 1994, ch. 284, § 48, p. 880.

#### STATUTORY NOTES

**Cross References.** 1353; am. 2000, ch. 274, § 80, p. 799, was  
Administrative procedure act, § 67-5201 et repealed by S.L. 2005, ch. 280, § 1.  
seq.

**Prior Laws.**

Former § 39-3524, which comprised I.C.,  
§ 39-3524, as added by 1993, ch. 374, § 1, p. 3566 and was amended and redesignated as  
this section by § 48 of S.L. 2005, ch. 280.

**Compiler's Notes.**

This section was formerly compiled as § 39-3566 and was amended and redesignated as this section by § 48 of S.L. 2005, ch. 280.

**39-3525. Effect of previous revocation or denial of a certificate. —** The department is not required to review the application of an applicant who has had a certificate denied or revoked until five (5) years have elapsed from the date of certificate denial, revocation, or appeals.

**History.** § 1, p. 887; am. and redesign. 2005, ch. 280,  
I.C., § 39-3567, as added by 1994, ch. 284, § 49, p. 880.

#### STATUTORY NOTES

**Prior Laws.**

Former § 39-3525, which comprised I.C.,  
§ 39-3525, as added by 1993, ch. 374, § 1, p. 1353; am. 2000, ch. 274, § 81, p. 799, was  
repealed by S.L. 2005, ch. 280, § 1.

**Compiler's Notes.**

This section was formerly compiled as § 39-3567 and was amended and redesignated as this section by § 49 of S.L. 2005, ch. 280.

**39-3526. Rules provided. —** Upon initial certification, certified family homes shall be provided a printed copy of all applicable statutes and rules by the department, without charge.

**History.** § 1, p. 887; am. 2000, ch. 274, § 105, p. 799;  
I.C., § 39-3568, as added by 1994, ch. 284, am. and redesign. 2005, ch. 280, § 50, p. 880.

#### STATUTORY NOTES

**Compiler's Notes.**

This section was formerly compiled as § 39-3568 and was amended and redesignated as this section by § 50 of S.L. 2005, ch. 280.

**39-3527. Responsibility for inspections and technical assistance. —** The certifying agency shall inspect and provide technical assistance to certified family homes. The department may provide consulting services upon request to any certified family home to assist in the identification and correction of deficiencies and in the upgrading of the quality of care provided by the certified family home.

**History.**

I.C., § 39-3527, as added by 2005, ch. 280, § 51, p. 880.

**39-3528. Operating without certification — Misdemeanor.** — Any person who operates a certified family home within the state without first obtaining certification as provided in this chapter shall be guilty of a misdemeanor.

**History.**

I.C., § 39-3571, as added by 1994, ch. 284,

§ 1, p. 887; am. 2000, ch. 274, § 108, p. 799; am. and redesign. 2005, ch. 280, § 52, p. 880.

**STATUTORY NOTES**

**Cross References.**

Penalty for misdemeanor when not otherwise provided, § 18-113.

3571 and was amended and redesignated as this section by § 52 of S.L. 2005, ch. 280.

**Compiler's Notes.**

This section was formerly compiled as § 39-

**39-3529. [Reserved.]**

**39-3530 — 39-3533. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

The following sections were repealed by S.L. 2005, ch. 280, § 1:

39-3530. Residential or assisted living council for the elderly. [I.C., § 39-3530, as added by 1993, ch. 374, § 1, p. 1353; am. 1996, ch. 207, § 43, p. 631; am. 2000, ch. 274, § 82, p. 799.]

39-3531. Powers and duties. [I.C., § 39-

3531, as added by 1993, ch. 374, § 1, p. 1353; am. 2000, ch. 274, § 83, p. 799.]

39-3532. Meetings. [I.C., § 39-3532, as added by 1993, ch. 374, § 1, p. 1353; am. 2000, ch. 274, § 84, p. 799.]

39-3533. Reimbursement of expenses. [I.C., § 39-3533, as added by 1993, ch. 374, § 1, p. 1353; am. 2000, ch. 274, § 85, p. 799.]

**39-3534 — 39-3539. [Reserved.]**

**39-3540 — 39-3553. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

The following sections were repealed by S.L. 2005, ch. 280, § 1:

39-3540. Licensing of residential or assisted living facilities for the elderly. [I.C., § 39-3540, as added by 1993, ch. 374, § 1, p. 1353; am. 2000, ch. 274, § 86, p. 799.]

39-3541. Initial application and issuance of a license. [I.C., § 39-3541, as added by 1993, ch. 374, § 1, p. 1353; am. 2000, ch. 274, § 87, p. 799.]

39-3542. Application. [I.C., § 39-3542, as added by 1993, ch. 374, § 1, p. 1353; am. 2000, ch. 274, § 88, p. 799.]

39-3543. Temporary license. [I.C., § 39-3543, as added by 1993, ch. 374, § 1, p. 1353.]

39-3544. Renewal of a license. [I.C., § 39-3544, as added by 1993, ch. 374, § 1, p. 1353.]

39-3545. Denial or revocation of a license. [I.C., § 39-3545, as added by 1993, ch. 374, § 1, p. 1353; am. 2000, ch. 274, § 89, p. 799.]

39-3546. Procedure for denial or revocation of a license. [I.C., § 39-3546, as added by 1993, ch. 374, § 1, p. 1353.]

39-3547. Effect of previous revocation or denial of a license. [I.C., § 39-3547, as added by 1993, ch. 374, § 1, p. 1353.]

39-3548. Rules provided. [I.C., § 39-3548, as added by 1993, ch. 374, § 1, p. 1353; am. 2000, ch. 274, § 90, p. 799.]

39-3549. Responsibility for inspections and licensing — Nontransferability of licenses.



[I.C., § 39-3549, as added by 1993, ch. 374, § 1, p. 1353; am. 2000, ch. 274, § 91, p. 799.]  
 39-3550. Consulting services. [I.C., § 39-3550, as added by 1993, ch. 374, § 1, p. 1353; am. 2000, ch. 274, § 92, p. 799.]

39-3551. Exemptions. [I.C., § 39-3551, as added by 1993, ch. 374, § 1, p. 1353; am. 1996, ch. 207, § 44, p. 631.]

39-3552. Unlicensed residential or assisted

living facilities for the elderly. [I.C., § 39-3552, as added by 1993, ch. 374, § 1, p. 1353; am. 2000, ch. 274, § 93, p. 799.]

39-3553. Placement of persons into an unlicensed residential or assisted living facility for the elderly. [I.C., § 39-3553, as added by 1993, ch. 374, § 1, p. 1353; am. 1996, ch. 207, § 45, p. 631; am. 2000, ch. 274, § 94, p. 799.]

**39-3554. Waiver or variance.** — The board shall provide, by rule, a procedure whereby a temporary variance or a permanent waiver of a specific standard may be granted in the event that good cause is shown for such a variance or waiver and providing that a variance or waiver of a standard does not endanger the health and safety of any resident. The decision to grant a variance or waiver shall not be considered as precedent or be given any force of effect in any other proceeding.

#### History.

I.C., § 39-3554, as added by 1993, ch. 374, § 1, p. 1353.

### 39-3554A — 39-3555. [Repealed.]

#### STATUTORY NOTES

##### Compiler's Notes.

The following sections were repealed by S.L. 2005, ch. 280, § 1:

39-3554A. Special waiver permitted. [I.C., § 39-3554A, as added by 1998, ch. 188, § 2, p. 683; am. 2000, ch. 274, § 95, p. 799.]

39-3555. Inspections. [I.C., § 39-3555, as added by 1993, ch. 374, § 1, p. 1353; am. 1996, ch. 207, § 46, p. 631; am. 2000, ch. 274, § 96, p. 799.]

**39-3556. Complaints.** — (1) A person who believes that any provision of this chapter has been violated may file a complaint with the certifying agency. Any such complaint shall be subject to the exemption from disclosure set forth in section 9-340B(16), Idaho Code.

(2) The certifying agency shall investigate, or cause to be investigated, any complaint alleging a violation of this chapter or applicable rules. If the certifying agency reasonably believes there has been such a violation, it shall conduct an inspection of the facility.

#### History.

I.C., § 39-3556, as added by 2006, ch. 282, § 2, p. 866.

#### STATUTORY NOTES

##### Prior Laws.

Former § 39-3556, which comprised I.C.,

§ 39-3556, as added by 1993, ch. 374, § 1, p. 1353, was repealed by S.L. 2005, ch. 280, § 1.

**39-3557 — 39-3560. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

The following sections were repealed by S.L. 2005, ch. 280, § 1:

39-3557. Enforcement process. [I.C., § 39-3557, as added by 1993, ch. 374, § 1, p. 1353; am. 2000, ch. 274, § 97, p. 799.]

39-3558. Specified remedies. [I.C., § 39-3558, as added by 1993, ch. 374, § 1, p. 1353; am. 2000, ch. 274, § 98, p. 799.]

39-3559. Transfer of residents. [I.C., § 39-3559, as added by 1993, ch. 374, § 1, p. 1353; am. 2000, ch. 274, § 99, p. 799.]

39-3560. Purpose of certified family homes. [I.C., § 39-3560, as added by 1994, ch. 284, § 1, p. 887; am. 2000, ch. 274, § 100, p. 799.]

**39-3561 — 39-3568. [Amended and Redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former §§ 39-3561 to 39-3568 were amended and redesignated as §§ 39-3505 and

39-3520 to 39-3526 by §§ 43 to 50 of S.L. 2005, ch. 280.

**39-3569, 39-3570. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

The following sections were repealed by S.L. 2005, ch. 280, § 1:

39-3569. Mandatory inspections. [I.C., § 39-3569, as added by 1994, ch. 284, § 1, p. 887; am. 2000, ch. 274, § 106, p. 799.]

39-3570. Enforcement process. [I.C., § 39-3570, as added by 1994, ch. 284, § 1, p. 887; am. 2000, ch. 274, § 107, p. 799.]

**39-3571. [Amended and Redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 39-3571 was amended and redesignated as § 39-3528 by § 52 of S.L. 2005, ch. 280.

39-3572. [Amended and Redesignated.]

**39-3572 — 39-3574. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

The following sections were repealed by S.L. 2005, ch. 280, § 1:

39-3572. Placement of persons into an uncertified family home. [I.C., § 39-3572, as added by 1994, ch. 284, § 1, p. 887; am. 2000, ch. 274, § 109, p. 799.]

39-3573. Negotiated service agreement. [I.C., § 39-3573, as added by 1994, ch. 284,

§ 1, p. 887; am. 1996, ch. 207, § 47, p. 631; am. 2000, ch. 274, § 110, p. 799.]

39-3573A. Physician's order for certified family homes. [I.C., § 39-3573A, as added by 2000, ch. 274, § 111, p. 799.]

39-3574. Written service plan. [I.C., § 39-3574, as added by 1994, ch. 284, § 1, p. 887; am. 1996, ch. 207, § 48, p. 631; am. 2000, ch. 274, § 112, p. 799.]

**39-3575. [Amended and Redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 39-3575 was amended and red-

esignated as § 39-3503 by § 53 of S.L. 2005, ch. 280.

**39-3576. Resident rights. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised I.C., § 39-3576, as added by 1994, ch. 284, § 1, p. 887;

am. 2000, ch. 274, § 114, p. 799, was repealed by S.L. 2005, ch. 280, § 1.

**39-3577. [Amended and Redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 39-3577 was amended and red-

esignated as § 39-3513 by § 54 of S.L. 2005, ch. 280.

**39-3578. [Amended and Redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 39-3578 was amended and red-

esignated as § 39-3504 by § 55 of S.L. 2005, ch. 280.

**39-3579. [Amended and Redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 39-3579 was amended and red-

esignated as § 39-3510 by § 56 of S.L. 2005, ch. 280.

**39-3580. [Amended and Redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 39-3580 was amended and red-

esignated as § 39-3512 by § 57 of S.L. 2005, ch. 280.

**CHAPTER 36****WATER QUALITY****SECTION.**

39-3601. Declaration of policy and statement of legislative intent.

39-3602. Definitions.

39-3603. Antidegradation policy and implementation.

39-3604. Designation of instream beneficial uses.

**SECTION.**

39-3605. Identification of reference streams or conditions.

39-3605B. [Amended and redesignated.]

39-3605C. Environmental remediation fund established.

39-3606. Use of reference streams or conditions to determine full support



## SECTION.

- of beneficial uses.
- 39-3606A. [Amended and redesignated.]
- 39-3606B. [Amended and redesignated.]
- 39-3606C. Appropriation of environmental remediation fund — Purpose of chapter.
- 39-3607. Monitoring to determine support of beneficial uses.
- 39-3608. Regulatory actions for water bodies where beneficial uses are fully supported.
- 39-3609. Identification of water bodies where beneficial uses are not fully supported.
- 39-3610. General limitations on point and nonpoint sources for water bodies not fully supporting beneficial uses.
- 39-3611. Development and implementation of total maximum daily load or equivalent processes.
- 39-3612. Integration of total maximum daily load processes with other programs.
- 39-3613. Creation of basin advisory groups.
- 39-3614. Duties of the basin advisory group.
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- 39-3617. Designation of outstanding resource waters.
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- 39-3620. Approval provisions for best management practices for new nonpoint source activities on or affecting outstanding resource waters.
- 39-3621. Monitoring provisions.
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- 39-3624. Declaration of policy — Designation of director.

## SECTION.

- 39-3625. Definitions.
- 39-3626. Authorization of grants and loans — Designation of administering agency — Reservation of funds for operations — Criteria — Priority projects — Eligible projects.
- 39-3627. Payments by state board of environmental quality — Contracts with municipalities and community and nonprofit noncommunity public water systems — Rules — Approval of attorney general — Audit of payments.
- 39-3628. Water pollution control fund established.
- 39-3629. Wastewater facility loan account established.
- 39-3630. Appropriation of water pollution control fund — Purpose of chapter.
- 39-3631. Appropriation of wastewater facility loan fund — Purpose of chapter.
- 39-3632. Grants and loans for design, planning or construction — Limits on amount of grants and loans.
- 39-3633. Water pollution control bonds.
- 39-3634. Cottage site defined.
- 39-3635. Cottage site leases — Requirements — Construction of sewage disposal facilities — Connection to water and sewer district systems — Payment of charges — Notification of defaults — Satisfaction of requirements.
- 39-3636. Failure to provide sewage disposal — Penalties.
- 39-3637. State board of environmental quality — Rules — Inspection.
- 39-3638. Final determination by issuing department authorized.
- 39-3639. Continuation of cottage site lease program.

**39-3601. Declaration of policy and statement of legislative intent.** — The legislature, recognizing that surface water is one of the state's most valuable natural resources, has approved the adoption of water quality standards and authorized the director of the department of environmental quality in accordance with the provisions of this chapter, to implement these standards. In order to maintain and achieve existing and designated beneficial uses and to conform to the expressed intent of congress to control pollution of navigable waters of the United States, the legislature declares that it is the purpose of this chapter to enhance and preserve the quality and value of the navigable waters of the United States within the state of Idaho, and to define the responsibilities of public agencies in the control, and

monitoring of water pollution, and, through implementation of this chapter, enhance the state's economic well-being. In consequence of the benefits resulting to the public health, welfare and economy, it is hereby declared to be the policy of the state of Idaho to protect this natural resource by monitoring and controlling water pollution; to support and aid technical and planning research leading to the control of water pollution, and to provide financial and technical assistance to municipalities, soil conservation districts and other agencies in the control of water pollution. The director, in cooperation with such other agencies as may be appropriate, shall administer this chapter. It is the intent of the legislature that the state of Idaho fully meet the goals and requirements of the federal clean water act and that the rules promulgated under this chapter not impose requirements beyond those of the federal clean water act.

**History.**

I.C., § 39-3601, as added by 1995, ch. 352,

§ 1, p. 1165; am. 2001, ch. 103, § 30, p. 253; am. 2011, ch. 116, § 1, p. 320.

**STATUTORY NOTES****Amendments.**

The 2011 amendment, by ch. 116, in the second sentence, substituted "pollution of navigable waters of the United States" for "pollution of streams, lakes and other surface waters" and substituted "navigable waters of the United States within the state of Idaho" for "surface water resources of the state of Idaho."

this section, is compiled as 33 USCS § 1251 et seq.

**Compiler's Notes.**

Former § 39-3601 was amended and redesignated as § 39-3624 by § 8 of S.L. 1995, ch. 352, effective July 1, 1995.

**Effective Dates.**

Section 5 of S.L. 2011, ch. 116 declared an emergency. Approved March 22, 2011.

**Federal References.**

The federal clean water act, referred to in

**JUDICIAL DECISIONS****ANALYSIS**

Legislative intent.

Relationship with federal law.

**Legislative Intent.**

While the state antidegradation policy code uses mandatory language, the preamble is explicit that the legislature intended to meet only federal minimum requirements. *Idaho Sporting Congress v. Thomas*, 137 F.3d 1146 (9th Cir. 1998), overruled on other grounds, *Lands Council v. McNair*, 537 F.3d 981 (9th Cir. 2008).

**Relationship With Federal Law.**

United States forest service and the bureau of land management did not act arbitrarily or capriciously in allowing expansion of a phosphate mine. *Greater Yellowstone Coalition v. Larson*, 641 F. Supp. 2d 1120 (D. Idaho 2009).

**RESEARCH REFERENCES**

**A.L.R.** — Actions brought under Federal Water Pollution Control Act Amendments of 1972 (Clean Water Act) (33 U.S.C.A. §§ 1251

et seq.) — Supreme Court cases. 163 A.L.R. Fed. 531.

**39-3602. Definitions.** — Whenever used or referred to in this chapter,



unless a different meaning clearly appears from the context, the following terms shall have the following meanings:

(1) "Applicable water quality standard" means those water quality standards identified in the rules of the department.

(2) "Attainable" beneficial uses means uses that can be achieved by the implementation of required effluent limits for point sources and cost-effective and reasonable best management practices for nonpoint sources.

(3) "Best management practice" means practices, techniques or measures developed, or identified, by the designated agency and identified in the state water quality management plan which are determined to be a cost-effective and practicable means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality goals.

(4) "Board" means the board of environmental quality.

(5) "Control strategies" means cost-effective actions in TMDL implementation plans to control the discharge of pollutants that can reasonably be taken to improve the water quality within the physical, operational, economic and other constraints that affect individual enterprises and communities.

(6) "Degradation" or "lower water quality" means, for purposes of antidegradation review, a change in a pollutant that is adverse to designated or existing uses, as calculated for a new point source, and based upon monitoring or calculated information for an existing point source increasing its discharge. Such degradation shall be calculated or measured after appropriate mixing of the discharge and receiving water body.

(7) "Department" means the department of environmental quality.

(8) "Designated agency" means the department of lands for timber harvest activities, for oil and gas exploration and development and for mining activities; the soil and water conservation commission for grazing activities and for agricultural activities; the transportation department for public road construction; the department of agriculture for aquaculture; and the department of environmental quality for all other activities.

(9) "Designated use or designated beneficial use" means those uses assigned to waters as identified in the rules of the department whether or not the uses are being attained. The department may adopt subcategories of a use.

(10) "Director" means the director of the department of environmental quality, or his or her designee.

(11) "Discharge" means any spilling, leaking, emitting, escaping, leaching, or disposing of a pollutant into the waters of the state. For the purposes of this chapter, discharge shall not include surface water runoff from nonpoint sources or natural soil disturbing events.

(12) "Existing use" means those surface water uses actually attained on or after November 28, 1975, whether or not they are designated uses. Existing uses may form the basis for subcategories of designated uses.

(13) "Full protection, full support, or full maintenance of designated beneficial uses of water" means compliance with those levels of water quality criteria listed in the appropriate rules of the department, or where there is no applicable numerical criteria, compliance with the reference streams or conditions approved by the director in consultation with the appropriate basin advisory group.



(14) "General permit" means an NPDES permit issued by the U.S. environmental protection agency authorizing a category of discharges under the federal clean water act or a nationwide or regional permit issued by the U.S. army corps of engineers under the federal clean water act.

(15) "Integrated report" means the consolidated listing and reporting of the state's water quality status pursuant to the federal clean water act.

(16) "National pollutant discharge elimination system (NPDES)" means the point source permitting program established pursuant to section 402 of the federal clean water act.

(17) "New nonpoint source activity" means a new nonpoint source activity or a substantially modified existing nonpoint source activity on or adversely affecting an outstanding resource water which includes, but is not limited to, new silvicultural activities, new mining activities and substantial modifications to an existing mining permit or approved plan, new recreational activities and substantial modifications to existing recreational activities, new residential or commercial development that includes soil disturbing activities, new grazing activities and substantial modifications to existing grazing activities, except that reissuance of existing grazing permits, or grazing activities and practices authorized under an existing permit, is not considered a new activity. It does not include naturally occurring events such as floods, landslides, and wildfire including prescribed natural fire.

(18) "Nonpoint source activities" includes grazing, crop production, silviculture, log storage or rafting, construction, mining, recreation, septic systems, runoff from storms and other weather related events and other activities not subject to regulation under the federal national pollutant discharge elimination system. Nonpoint source activities on waters designated as outstanding resource waters do not include issuance of water rights permits or licenses, allocation of water rights, operation of diversions, or impoundments.

(19) "Nonpoint source runoff" means water which may carry pollutants from nonpoint source activities into the waters of the state.

(20) "Outstanding resource water" means a high quality water, such as water of national and state parks and wildlife refuges and water of exceptional recreational or ecological significance, which has been so designated by the legislature. It constitutes an outstanding national or state resource that requires protection from point source and nonpoint source activities that may lower water quality.

(21) "Person" means any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any legal entity, which is recognized by law as the subject of rights and duties.

(22) "Point source" means any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are, or may be, discharged. This term does not include return flows from irrigated agriculture, discharges from dams and hydroelectric generating facilities or any source or activity considered a nonpoint source by definition.

(23) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, silt, cellar dirt; and industrial, municipal and agricultural waste, gases entrained in water; or other materials which, when discharged or released to water in excessive quantities cause or contribute to water pollution. Provided however, biological materials shall not include live or occasional dead fish that may accidentally escape into the waters of the state from aquaculture facilities.

(24) "Reference stream or condition" means one (1) of the following:

- (a) The minimum biological, physical and chemical conditions necessary to fully support the designated beneficial uses; or
- (b) A water body representing natural conditions with few impacts from human activities and which are representative of the highest level of support attainable in the basin; or
- (c) A water body representing minimum conditions necessary to fully support the designated beneficial uses.

In highly mineralized areas or in the absence of such reference streams or water bodies, the director, in consultation with the basin advisory group and the technical advisers to it, may define appropriate hypothetical reference conditions or may use monitoring data specific to the site in question to determine conditions in which the beneficial uses are fully supported.

(25) "Short-term or temporary activity" means an activity which is limited in scope and is expected to have only minimal impact on water quality as determined by the director. Short-term or temporary activities include, but are not limited to, maintenance of existing structures, limited road and trail reconstruction, soil stabilization measures, and habitat enhancement structures.

(26) "Silviculture" means those activities associated with the regeneration, growing and harvesting of trees and timber including, but not limited to, disposal of logging slash, preparing sites for new stands of trees to be either planted or allowed to regenerate through natural means, road construction and road maintenance, drainage of surface water which inhibits tree growth or logging operations, fertilization, application of herbicides or pesticides, all logging operations, and all forest management techniques employed to enhance the growth of stands of trees or timber.

(27) "Soil and water conservation commission" means an agency of state government as created in section 22-2718, Idaho Code.

(28) "Soil conservation district" means an entity of state government as defined in section 22-2717, Idaho Code.

(29) "State" means the state of Idaho.

(30) "State water quality management plan" means the state management plan developed and updated by the department in accordance with sections 205, 208, and 303 of the federal clean water act.

(31) "Subbasin assessment" means a document that describes a watershed or watersheds for which a total maximum daily load is proposed, the water quality concerns, the status and attainability of designated uses and water quality criteria for individual water bodies, the nature and location of pollutant sources, past and ongoing pollutant control activities, and such



other information that the director with the advice of the local watershed advisory group determines is pertinent to the analysis of water quality and the development and implementation of a total maximum daily load.

(32) "Total maximum daily load (TMDL)" means a plan for a water body not fully supporting designated beneficial uses and includes the sum of the individual wasteload allocations for point sources, load allocations for nonpoint sources, and natural background levels of the pollutant impacting the water body. Pollutant allocations established through TMDLs shall be at a level necessary to implement the applicable water quality standards for the identified pollutants with seasonal variations and a margin of safety to account for uncertainty concerning the relationship between the pollutant loading and water quality standards.

(33) "Waters or water body" means the navigable waters of the United States as defined in the federal clean water act. For the purposes of this chapter, water bodies shall not include municipal or industrial wastewater treatment or storage structures or private reservoirs, the operation of which has no effect on waters.

(34) "Water pollution" is such alteration of the thermal, chemical, biological or radioactive properties of any waters of the state, or such discharge or release of any contaminant into the waters of the state as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare or to domestic, commercial, industrial, recreational, aesthetic or other legitimate uses or to livestock, wild animals, birds, fish or other aquatic life.

(35) "Water quality standards" are the designated uses of a water body and water quality criteria necessary to support those uses, and an antidegradation policy.

(36) "Watersheds" means the land area from which water flows into a stream or other body of water which drains the area. For the purposes of this chapter, the area of watersheds shall be recommended by the basin advisory group described in section 39-3613, Idaho Code.

#### History.

I.C., § 39-3602, as added by 1995, ch. 352, § 1, p. 1165; am. 1997, ch. 279, § 1, p. 828;

am. 2001, ch. 103, § 31, p. 253; am. 2005, ch. 334, § 1, p. 1045; am. 2010, ch. 279, § 25, p. 719; am. 2011, ch. 116, § 2, p. 320.

### STATUTORY NOTES

#### Cross References.

Board of environmental quality, § 39-107.  
Department of agriculture, § 22-101 et seq.  
Department of environmental quality, § 39-104 et seq.  
Department of lands, § 58-101 et seq.  
Soil and water conservation commission, § 22-2718.  
Transportation department, § 40-501 et seq.

#### Amendments.

The 2010 amendment, by ch. 279, in subsections (7) and (25), substituted "soil and water conservation commission" for "soil conservation commission."

The 2011 amendment, by ch. 116, added subsections (6), (14) and (15), and redesignated the existing subsections accordingly; deleted former subsection (13), which was the definition for "Lower water quality"; and in subsection (33), rewrote the first sentence, which read: "Waters or water body" means all the accumulations of surface water, natural and artificial, public and private, or parts thereof which are wholly are partially within, flow through or border upon this state."

#### Federal References.

The federal clean water act, referred to in this section, is compiled as 33 USCS § 1251 et seq.



Section 402 of the federal clean water act, referred to in subsection (16), is compiled as 33 U.S.C.S., § 1342.

Sections 205, 208 and 303 of the federal clean water act, referred to in subsection (30), are compiled as 33 U.S.C.S., §§ 1285, 1288 and 1313, respectively.

#### **Compiler's Notes.**

Former § 39-3602 was amended and redesignated as § 39-3625 by § 9 of S.L. 1995, ch. 352, effective July 1, 1995.

The words enclosed in parentheses so appeared in the law as enacted.

#### **Effective Dates.**

Section 5 of S.L. 2005, ch. 334 declared an emergency. Approved April 11, 2005 and applicable to all pending or subsequent subbasin assessment or total maximum daily load document filings.

Section 5 of S.L. 2011, ch. 116 declared an emergency. Approved March 22, 2011.

### **JUDICIAL DECISIONS**

**Cited in:** *Asarco Inc. v. State*, 138 Idaho 719, 69 P.3d 139 (2003); *Greater Yellowstone*

*Coalition v. Larson*, 641 F. Supp. 2d 1120 (D. Idaho 2009).

### **RESEARCH REFERENCES**

**A.L.R.** — What are “navigable waters” subject to Federal Water Pollution Control Act

(33 U.S.C.A. §§ 1251 et seq.). 160 A.L.R. Fed. 585.

#### **39-3603. Antidegradation policy and implementation. — (1) Policy.**

(a) Maintenance of existing uses for all waters — Tier I protection. The existing instream beneficial uses of each water body and the level of water quality necessary to protect those uses shall be maintained and protected.

(b) High quality waters — Tier II protection. Where the quality of waters exceeds levels necessary to support propagation of fish, shellfish and wildlife and recreation in and on the water, that quality shall be maintained unless the department finds, after full satisfaction of the intergovernmental coordination and public participation provisions of this chapter, and the department's planning processes, along with appropriate planning processes of other agencies, that lowering water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such reductions in water quality, the department shall assure water quality adequate to protect existing uses fully.

(c) Outstanding resource waters — Tier III protection. Where an outstanding resource water has been designated by the legislature that water quality shall be maintained and protected from the impacts of point and nonpoint source activities.

#### **(2) Implementation.**

(a) General permits. For general permits issued on or after July 1, 2011, the department will conduct an antidegradation review, including any required Tier II analysis, at the time at which general permits are certified. For general permits that the department determines adequately address antidegradation, review of individual applications for coverage will not be required unless it is required by the general permit. For general permits that the department determines do not adequately address antidegradation, the department may conclude that other conditions, such as the submittal of additional information or individual certification at the time an application is submitted for coverage under a

general permit, may be necessary in the general permit to provide reasonable assurance of compliance with the antidegradation policy. If supported by the permit record, the department may also presume that discharges authorized under a general permit are insignificant or that the pollution controls required in the general permit are the least degrading alternative as specified in the department's rules.

(b) Identification of Tier II waters. The department will utilize a water body by water body approach in determining where Tier II protection is appropriate in addition to Tier I protection. This approach shall be based on an assessment of the chemical, physical, biological and other information regarding the water body. The most recent federally approved integrated report and supporting data will be used to determine the appropriate level of protection as follows:

(i) Water bodies identified in the integrated report as fully supporting assessed uses will be provided Tier II protection.

(ii) Water bodies identified in the integrated report as not assessed will be provided an appropriate level of protection on a case-by-case basis using information available at the time of a proposal for a new or reissued permit or license.

(iii) Water bodies identified in the integrated report as not fully supporting assessed uses will receive Tier I protection for the impaired aquatic life or recreational use, except as follows:

1. For aquatic life uses identified as impaired for dissolved oxygen, pH or temperature, if biological or aquatic habitat parameters show a healthy, balanced biological community is present, as described in the water body assessment guidance published by the department, then the water body shall receive Tier II protection for aquatic life.

2. For recreational uses, if water quality data show compliance with those levels of water quality criteria listed in the department's rules, then the water body shall receive Tier II protection for recreational uses.

(iv) Special resource waters listed in the department's rules shall be evaluated in the same fashion as all other waters.

(c) Tier II analysis for insignificant activity or discharge. The department shall consider the size and character of an activity or discharge or the magnitude of its effect on the receiving stream and shall determine whether it is insignificant. If an activity or discharge is determined to be insignificant, then no further Tier II analysis for other source controls, alternatives analysis or socioeconomic justification is required.

(i) The department shall determine insignificance when the proposed change in an activity or discharge, from conditions as of July 1, 2011, will not cumulatively decrease assimilative capacity by more than ten percent (10%).

(ii) The department may request additional information from the applicant in making a determination whether a proposed change in an activity or discharge is insignificant.



**History.**

I.C., § 39-3603, as added by 1995, ch. 352, § 1, p. 1165; am. 2011, ch. 116, § 3, p. 320.

**STATUTORY NOTES****Amendments.**

The 2011 amendment, by ch. 116, rewrote the section heading, which read: "General water quality standard and antidegradation policy"; added the subsection (1) and paragraph (1)(a) and (1)(b) designations and the paragraph headings to the existing provisions of the section; and added paragraph (1)(c) and subsection 2.

**Compiler's Notes.**

Former § 39-3603 was amended and redesignated as § 39-3626 by § 10 of S.L. 1995, ch. 352, effective July 1, 1995.

**Effective Dates.**

Section 5 of S.L. 2011, ch. 116 declared an emergency. Approved March 22, 2011.

**JUDICIAL DECISIONS****ANALYSIS**

Maintenance of water quality.

Relationship with federal law.

**Maintenance of Water Quality.**

The state antidegradation policy only obligates the forest service to maintain the federal standard water quality necessary to preserve existing uses and does not present an absolute bar to any adverse effects on water quality. *Idaho Sporting Congress v. Thomas*, 137 F.3d 1146 (9th Cir. 1998), overruled on

other grounds, *Lands Council v. McNair*, 537 F.3d 981 (9th Cir. 2008).

**Relationship With Federal Law.**

United States forest service and the bureau of land management did not act arbitrarily or capriciously in allowing expansion of a phosphate mine. *Greater Yellowstone Coalition v. Larson*, 641 F. Supp. 2d 1120 (D. Idaho 2009).

**39-3604. Designation of instream beneficial uses.** — For each surface water body, the director shall designate, pursuant to chapter 52, title 67, Idaho Code, and specifically list in the rules of the department, the beneficial use which that water body can reasonably be expected to support without regard to whether that use is fully supported at the time of such designation. In making such designations, the director shall consider the existing use of the water body and such physical, geological, chemical and biological measures as may affect the water body and shall make such designations utilizing fully the public participation provisions set forth in this chapter. Designated uses as set forth in this chapter shall fully support existing uses. Designations of beneficial uses shall be reviewed as necessary and revised when such physical, chemical or biological measures indicate the need to do so. In revising a designated beneficial use, the director shall consider the economic impact of the revision and the economic costs required to fully support the revised designated beneficial use. There shall be no requirement for persons who either conduct nonpoint activities or who conduct operations on waters described in section 39-3609, Idaho Code, pursuant to a national pollution discharge elimination system permit to meet water quality criteria other than those necessary for the full support of the existing beneficial use for the water body pertinent to either the nonpoint activity or point source permit in question, except as provided in section 39-3611, Idaho Code.



**History.**

I.C., § 39-3604, as added by 1995, ch. 352,  
§ 1, p. 1165; am. 1997, ch. 279, § 2, p. 828.

**STATUTORY NOTES****Compiler's Notes.**

Former § 39-3604 was amended and reded-

signed as § 39-3627 by § 11 of S.L. 1995, ch. 352, effective July 1, 1995.

**39-3605. Identification of reference streams or conditions.** — The director shall, in a manner consistent with the public participation provisions set forth in this chapter and in accordance with chapter 52, title 67, Idaho Code, identify reference streams or conditions to assist in determining when designated beneficial uses are being fully supported. Streams or conditions shall be selected to represent the land types, land uses and geophysical features of the basins described in this chapter. Reference streams or conditions shall be representative of one (1) of the following:

(1) A stream or other water body reflecting natural conditions with few impacts from human activities and which is representative of the highest level of support attainable in the basin; or

(2) A stream or water body reflecting the minimum conditions necessary to fully support the designated beneficial uses; or

(3) Physical, chemical and biological indicators identified in the rules of the department which reflect full support of designated beneficial uses.

**History.**

I.C., § 39-3605, as added by 1995, ch. 352,  
§ 1, p. 1165; am. 1997, ch. 279, § 3, p. 828.

**STATUTORY NOTES****Compiler's Notes.**

Former § 39-3605 was amended and reded-

signed as § 39-3628 by § 12 of S.L. 1995, ch. 352, effective July 1, 1995.

**39-3605B. [Amended and redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 39-3605B was amended and re-

designated as § 39-3629 by § 13 of S.L. 1995, ch. 352, effective July 1, 1995.

**39-3605C. Environmental remediation fund established.** — There is hereby created in the state treasury a fund to be known as the environmental remediation fund. Surplus moneys in the environmental remediation fund shall be invested by the state treasurer in the manner provided for idle state moneys in the state treasury under section 67-1210, Idaho Code. Interest received on all such investments shall be paid into the environmental remediation fund. The fund may have paid into it:

(1) Legislative appropriations and transfers from other funds;

(2) All donations and grants from any source which may be used for the provisions of this act;

(3) Any other funds which may hereafter be provided by law.

**History.**

I.C., § 39-3605C, as added by 1995, ch. 344,  
§ 2, p. 1129.

**STATUTORY NOTES****Compiler's Notes.**

344, which is compiled as §§ 39-3605C and  
39-3606C.

The words "this act" refer to S.L. 1995, ch.

**39-3606. Use of reference streams or conditions to determine full support of beneficial uses.** — The director, in consultation with the basin advisory group, shall conduct monitoring to determine if designated beneficial uses are fully supported. In making such determination, the director shall compare the physical, chemical and biological measures of the water body in question with the reference stream or condition appropriate to the land type, land uses and geophysical features of the water body in question as described in section 39-3605(2), Idaho Code. If the water body in question has such physical, chemical or biological measures as the reference water body or condition, even though such measures may be diminished from the conditions set forth in section 39-3605(1), Idaho Code, then the director shall deem the designated beneficial uses for the water in question to be fully supported and as having achieved the objectives of the federal clean water act and of this chapter. When site-specific standards have been developed for an activity pursuant to the rules of the department, the use of reference streams as described in this section shall not be necessary.

**History.**

I.C., § 39-3606, as added by 1995, ch. 352,  
§ 1, p. 1165; am. 1997, ch. 279, § 4, p. 828.

**STATUTORY NOTES****Cross References.**

Basin advisory groups, § 39-3613.

**Federal References.**

The federal clean water act, referred to in this section, is codified as 33 USCS § 1251 et seq.

**Compiler's Notes.**

Former § 39-3606 was amended and redesignated as § 39-3630 by § 14 of S.L. 1995, ch. 352, effective July 1, 1995.

**39-3606A. [Amended and redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 39-3606A was amended and re-

designated as § 39-3631 by § 15 of S.L. 1995, ch. 352, effective July 1, 1995.

**39-3606B. [Amended and redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 39-3606B was amended and re-

designated as § 39-3632 by § 16 of S.L. 1995, ch. 352, effective July 1, 1995.

**39-3606C. Appropriation of environmental remediation fund — Purpose of chapter.** — Moneys in the environmental remediation fund may be used for annual legislative appropriations for the purpose of environmental cleanup and remediation and restoration in, but not limited to, the following areas:

- (1) To provide the state's matching share of grants for remediation including superfund grants;
- (2) To provide for the operations of remediation activities.

**History.**

I.C., § 39-3606C, as added by 1995, ch. 344,  
§ 3, p. 1130.

**39-3607. Monitoring to determine support of beneficial uses.** — The director shall conduct a beneficial use attainability and status survey to identify appropriate designated uses and to determine the status of designated beneficial uses in each water body. Measures to determine appropriate designated uses and the status of designated beneficial uses shall include appropriate water quality standards as identified in the rules of the department in conjunction with biological or aquatic habitat measures that may include, but are not limited to: stream width, stream depth, stream shade, sediment, bank stability, water flows, physical characteristics of the stream that affect habitat for fish, macroinvertebrate species or other aquatic life, and the variety and number of fish or other aquatic life.

Previous assessments of beneficial use attainability and status which are of a quality and content acceptable to the director shall constitute the baseline data against which future assessments shall be made to determine changes in the water body and what beneficial uses can be attained in it. In addition, the director, to the extent possible, may determine whether changes in the condition of the water body are the result of past or ongoing point or nonpoint source activities. The director shall also seek information from appropriate public agencies regarding land uses and geological or other information for the watershed which may affect water quality and the ability of the water body in question to fully support or attain designated beneficial uses. In carrying out the provisions of this section, the director may contract with private enterprises or public agencies to provide the desired data.

**History.**

I.C., § 39-3607, as added by 1995, ch. 352,  
§ 1, p. 1165.

**STATUTORY NOTES**

**Compiler's Notes.**

Former § 39-3607 was amended and redes-

ignated as § 39-3633 by § 17 of S.L. 1995, ch. 352, effective July 1, 1995.

**39-3608. Regulatory actions for water bodies where beneficial uses are fully supported.** — For streams or other water bodies where the director has determined that designated beneficial uses are being fully supported, the director shall assure, in a manner consistent with other



existing applicable statutes, and rules, that all programs deemed necessary to maintain full support of designated beneficial uses are employed. In providing such assurances, the director may enter together into an agreement with public agencies in accordance with sections 67-2326 through 67-2333, Idaho Code.

**History.**  
I.C., § 39-3608, as added by 1995, ch. 352,  
§ 1, p. 1165.

STATUTORY NOTES

**Compiler’s Notes.**  
Former § 39-3608 was amended and redesignated as § 39-3634 by § 18 of S.L. 1995, ch. 352, effective July 1, 1995.

**39-3609. Identification of water bodies where beneficial uses are not fully supported.** — In accordance with the provisions set forth in the federal clean water act and the public participation provisions set forth in this chapter, the director shall notify the appropriate public agencies of any water bodies in which the designated beneficial uses are not fully supported. For water bodies so identified, the director shall place such water bodies into one (1) of the following priority classifications for the development of total maximum daily load or equivalent processes:

(1) “High,” wherein definitive and generally accepted water quality data indicate that unless remedial actions are taken in the near term there will be significant risk to designated or existing beneficial uses of a particular water body. The director in establishing this category, shall consider public involvement as set forth in this chapter.

(2) “Medium,” wherein water quality data indicate that unless remedial actions are taken there will be risks to designated or existing beneficial uses.

(3) “Low,” wherein limited or subjective water quality data indicate designated uses are not fully supported, but that risks to human health, aquatic life, or the recreational, economic or aesthetic importance of a particular water body are minimal.

**History.**  
I.C., § 39-3609, as added by 1995, ch. 352,  
§ 1, p. 1165; am. 1997, ch. 279, § 5, p. 828.

STATUTORY NOTES

<b>Federal References.</b> The federal clean water act, referred to in this section, is codified as 33 USCS § 1251 et seq.	<b>Compiler’s Notes.</b> Former § 39-3609 was amended and redesignated as § 39-3635 by § 19 of S.L. 1995, ch. 352, effective July 1, 1995.
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**39-3610. General limitations on point and nonpoint sources for water bodies not fully supporting beneficial uses.** — The director shall assure, in a manner consistent with existing statutes or rules, that for each category of water body, as described in section 39-3609(1) through (3), Idaho Code, the following limitations shall apply:

(1) For waters in the “high,” category a total maximum daily load or

equivalent process as described in this chapter shall be undertaken. Provided however, that nothing in this section shall be interpreted as requiring best management practices for agricultural operations which are not adopted on a voluntary basis.

(2) For waters in the "medium" category, such changes in permitted discharges from point sources on the water body or to the best management practices for nonpoint sources within the watershed deemed necessary to prohibit further impairment of the designated or existing beneficial uses.

(3) For waters in the "low" category, such changes in permitted discharges from point sources on the water body or to the best management practices for nonpoint sources within the watershed deemed necessary to prohibit further impairment of the designated or existing beneficial uses.

#### **History.**

I.C., § 39-3610, as added by 1995, ch. 352,  
§ 1, p. 1165.

#### **STATUTORY NOTES**

#### **Compiler's Notes.**

Former § 39-3610 was amended and redes-

ignated as § 39-3636 by § 20 of S.L. 1995, ch. 352, effective July 1, 1995.

**39-3611. Development and implementation of total maximum daily load or equivalent processes.** — (1) For water bodies described in section 39-3609, Idaho Code, the director shall, in accordance with the priorities set forth in section 39-3610, Idaho Code, and in accordance with sections 39-3614 through 39-3616, Idaho Code, and as required by the federal clean water act, prepare a subbasin assessment and develop a total maximum daily load to allocate pollutant loads to point source and nonpoint sources that discharge pollutants to the water body.

(2) Upon the completion of a total maximum daily load, the director shall publish notice of the final decision on the TMDL in the Idaho administrative bulletin and provide written notice to members of the applicable watershed advisory group. The director's final decision shall be based upon a record that provides the basis for the total maximum daily load. The rulemaking provisions in sections 67-5220 through 67-5231, Idaho Code, shall not apply to TMDLs. The director's final decision regarding a TMDL may be appealed to the board of environmental quality in accordance with section 39-107(5), Idaho Code, and the rules governing such appeals. The time for appeal to the board shall commence upon publication in the administrative bulletin. The board's final decision is subject to judicial review under section 39-107(6), Idaho Code. The provisions of this subsection shall apply to all total maximum daily loads developed by the director after January 1, 1995. Provided however, that the rulemaking provisions in sections 67-5220 through 67-5231, Idaho Code, shall apply to TMDLs for metals in the Coeur d'Alene River Basin, upstream from the head of the Spokane River. Provided further, that nothing herein shall modify the requirement that water quality standards be promulgated as rules of the department pursuant to title 67, chapter 52, Idaho Code.

(3) For water bodies where an applicable water quality standard has not been attained due to impacts that occurred prior to 1972, no further



restrictions under a total maximum daily load process shall be placed on a point source discharge unless the point source contribution of a pollutant exceeds twenty-five percent (25%) of the total load for that pollutant. Existing uses shall be maintained on all such water bodies.

(4) Subbasin assessments and total maximum daily load processes developed pursuant to this section shall include, but not be limited to:

- (a) Identification of pollutant(s) impacting the water body;
- (b) An inventory of all point and nonpoint sources of the identified pollutant(s), if practical, or an analysis of the land types, land uses and geographical features within the watershed that may be contributing identified pollutants to the water body;
- (c) An analysis of why current control strategies are not effective in assuring full support of designated beneficial uses;
- (d) A plan to monitor and evaluate progress toward meeting water quality standards;
- (e) Pollution control strategies for both point sources and nonpoint sources;
- (f) Identification of the period of time necessary to achieve full support of designated beneficial uses through implementation of pollution control strategies, which takes into account any expected changes to applicable water quality standards; and
- (g) An adequate margin of safety to account for uncertainty.

(5) Point source discharges for which a national pollutant discharge elimination system permit is approved after January 1, 1995, shall be deemed to have met the requirements of this section.

(6) No instream target for a pollutant shall be set as part of a TMDL process unless the data and analysis in the subbasin assessment demonstrate that the pollutant is causing or contributing to a violation of a water quality standard in the stream for which the TMDL is being developed. If a pollutant load is allocated to a tributary inflow as part of a downstream TMDL, the director shall develop a plan to meet such allocation in consultation with the tributary watershed advisory group as provided in subsection (8) of this section.

(7) The director shall review and reevaluate each TMDL, supporting subbasin assessment, implementation plan(s) and all available data periodically at intervals of no greater than five (5) years. Such reviews shall include the assessments required by section 39-3607, Idaho Code, and an evaluation of the water quality criteria, instream targets, pollutant allocations, assumptions and analyses upon which the TMDL and subbasin assessment were based. If the members of the watershed advisory group, with the concurrence of the basin advisory group, advise the director that the water quality standards, the subbasin assessment, or the implementation plan(s) are not attainable or are inappropriate based upon supporting data, the director shall initiate the process or processes to determine whether to make recommended modifications. The director shall report to the legislature annually the results of such reviews.

(8) Each TMDL and any supporting subbasin assessment shall be developed and periodically reviewed and modified in consultation with the watershed advisory group for the watershed in which the water bodies are located. Consultation shall include, but not be limited to:



- (a) Upon request, providing the watershed advisory group with all available information in the possession of the department concerning applicable water quality standards, water quality data, monitoring, assessments, reports, procedures and schedules for developing and submitting the TMDL and any supporting subbasin assessment to the United States environmental protection agency;
  - (b) Utilizing the knowledge, expertise, experience and information of the watershed advisory group in assessing the status, attainability or appropriateness of water quality standards, and in developing a TMDL and any supporting subbasin assessment; and
  - (c) Providing the watershed advisory group with an adequate opportunity to participate in drafting the documents for the TMDL and any supporting subbasin assessment and to suggest changes to the documents.
- (9) No TMDL shall be published for public comment or submitted for approval to the United States environmental protection agency until consultation, as herein provided, has occurred. If, after consultation, the watershed advisory group disagrees with the TMDL or any supporting subbasin assessment, or has determined that applicable water quality standards should be reevaluated or revised, such position and the basis therefor shall be documented in the public notice of availability to the TMDL and any supporting subbasin assessment for review, and in any submission of the same to the United States environmental protection agency. The director shall respond to the points raised by the watershed advisory group and shall document the response in the final decision.
- (10) Nothing in this section shall be interpreted as requiring best management practices for agricultural nonpoint source activities which are not adopted on a voluntary basis, nor shall this section be interpreted to relieve any person from the responsibility to comply with the Idaho forest practices act.

#### History.

I.C., § 39-3611, as added by 1995, ch. 352, § 1, p. 1165; am. 1997, ch. 279, § 6, p. 828;

am. 2003, ch. 351, § 1, p. 938; am. 2005, ch. 334, § 2, p. 1045.

### STATUTORY NOTES

#### Cross References.

Idaho forest practices act, § 38-1301 et seq.  
Watershed advisory groups, § 39-3615.

#### Federal References.

The federal clean water act, referred to in this section, is codified as 33 USCS § 1251 et seq.

For provisions relating to the national pollutant discharge elimination system permit, see 33 USCS § 1342.

#### Compiler's Notes.

Former § 39-3611 was amended and redes-

ignated as § 39-3637 by § 21 of S.L. 1995, ch. 352, effective July 1, 1995.

The letter "s" enclosed in parentheses so appeared in the law as enacted.

#### Effective Dates.

Section 3 of S.L. 2003, ch. 351 provided that the act should take effect on and after July 1, 2003.

Section 5 of S.L. 2005, ch. 334 declared an emergency. Approved April 11, 2005 and applicable to all pending or subsequent subbasin assessment or total maximum daily load document filings.

JUDICIAL DECISIONS

**Application.**

Clearly the procedures outlined in this section are generally and uniformly applicable and require the Idaho department of environ-

mental quality to focus on the water body as a whole, as opposed to the individual sources of pollution. *Asarco Inc. v. State*, 138 Idaho 719, 69 P.3d 139 (2003).

**39-3612. Integration of total maximum daily load processes with other programs.** — Upon completion of total maximum daily load processes as set forth in section 39-3611, Idaho Code, the director shall integrate such processes into the state’s water quality management plan developed pursuant to the federal clean water act. Total maximum daily load processes shall be used by all designated agencies for achieving water quality standards.

**History.**

I.C., § 39-3612, as added by 1995, ch. 352, § 1, p. 1165; am. 2003, ch. 351, § 2, p. 938.

STATUTORY NOTES

**Federal References.**

The federal clean water act, referred to in this section, is codified as 33 USCS § 1251 et seq.

Ignated as § 39-3638 by § 22 of S.L. 1995, ch. 352, effective July 1, 1995.

**Effective Dates.**

Section 3 of S.L. 2003, ch. 351 provided that the act should take effect on and after July 1, 2003.

**Compiler’s Notes.**

Former § 39-3612 was amended and redes-

**39-3613. Creation of basin advisory groups.** — The director, in consultation with the designated agencies, shall name, for each of the state’s major river basins, no less than one (1) basin advisory group which shall generally advise the director on water quality objectives for each basin and work in a cooperative manner with the director to achieve these objectives. Each such group shall establish by majority vote, operating procedures to guide the work of the group. Members shall be compensated pursuant to section 59-509(c), Idaho Code. The membership of each basin advisory group shall be representative of the industries and interests directly affected by the implementation of water quality programs within the basin and each member of the group shall either reside within the basin or represent persons with a real property interest within the basin. Recognized groups representing those industries or interests in the basin may nominate members of the group to the director. Each basin advisory group named by the director shall reflect a balanced representation of the interests in the basin and shall, where appropriate, include a representative from each of the following: agriculture, mining, nonmunicipal point source discharge permittees, forest products, local government, livestock, Indian tribes (for areas within reservation boundaries), water-based recreation, and environmental interests. In addition, the director shall name one (1) person to represent the public at large who may reside outside the basin. Members named to the basin advisory groups shall, in the opinion of the director, have demonstrated interest or expertise which will be of benefit to the work of the basin advisory group. The director may also name as may be needed those

who have expertise necessary to assist in the work of the basin advisory group who shall serve as technical nonvoting advisers to the basin advisory group.

**History.**

I.C., § 39-3613, as added by 1995, ch. 352, § 1, p. 1165; am. 1997, ch. 214, § 1, p. 633;

am. 2001, ch. 103, § 32, p. 253; am. 2001, ch. 371, § 1, p. 1295; am. 2007, ch. 90, § 21, p. 246.

**STATUTORY NOTES**

**Amendments.**

The 2007 amendment, by ch. 90, deleted "department" from the end of the section.

**Compiler's Notes.**

Former § 39-3613 was amended and redesignated as § 39-3639 by § 23 of S.L. 1995, ch. 352, effective July 1, 1995.

The words enclosed in parentheses so appeared in the law as enacted.

**Effective Dates.**

Section 2 of S.L. 1997, ch. 214 declared an emergency. Approved March 19, 1997.

Section 3 of S.L. 2001, ch. 371 declared an emergency and provided: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, provided however that Section 1 of this act shall become effective only upon the execution of the order pursuant to Section 39-8106, Idaho Code, and a filing of the order with the Governor and the Secretary of State." Such order, dated January 12, 2002, was filed in the Office of the Secretary of State on April 17, 2002.

**39-3614. Duties of the basin advisory group.** — Each basin advisory group shall meet as necessary to conduct the group's business and to provide general coordination of the water quality programs of all public agencies pertinent to each basin. Duties of the basin advisory groups shall include, but not be limited to, providing advice to the director for:

- (1) Determining priorities for monitoring;
- (2) Revisions in the beneficial uses designated for each stream and the status and attainability of designated or existing beneficial uses for the water bodies within the basin;
- (3) Assigning water bodies to the categories described in section 39-3609, Idaho Code;
- (4) Reviewing the development and implementation of total maximum daily load processes as described in section 39-3611, Idaho Code;
- (5) Suggesting members of the watershed advisory groups described in section 39-3615, Idaho Code; and
- (6) Establishing priorities for water quality programs within the basin based on the economic resources available to implement such programs.

In carrying out the provisions of this chapter, the director and the basin advisory groups shall employ all means of public involvement deemed necessary, including the public involvement required by section 39-3603, Idaho Code, or required in chapter 52, title 67, Idaho Code, and shall cooperate fully with the public involvement or planning processes of other appropriate public agencies.

**History.**

I.C., § 39-3614, as added by 1995, ch. 352, § 1, p. 1165.



## STATUTORY NOTES

**Prior Laws.**

Former § 39-3614 which comprised I.C.,  
§ 39-3614, as added by 1989, ch. 153, § 1, p.

363; am. 1992, ch. 333, § 1, p. 999, was  
repealed by § 5 of S.L. 1995, ch. 352.

**39-3615. Creation of watershed advisory groups.** — Basin advisory groups shall identify representatives of the industries and other interests affected by the management of water quality within a watershed who are prospective members of an advisory group for the watershed and shall advise the director of their findings. The director, upon the advice of the appropriate basin advisory group, shall name watershed advisory groups which will generally advise the department on the appropriateness, attainability and status of existing and designated beneficial uses and water quality criteria within the watershed, and on the development and implementation of TMDLs and other state water quality plans, including those specific actions needed to control point and nonpoint sources of pollution within the watersheds of those water bodies where designated beneficial uses are not fully supported. Each watershed advisory group shall be formed early enough to complete consultation, as provided in section 39-3611(8), Idaho Code, prior to the date the TMDL and any supporting subbasin assessment is scheduled to be submitted to the United States environmental protection agency for approval.

If the members of the watershed advisory group, with the concurrence of the basin advisory group, advise the director that applicable water quality standards within the watershed are not attainable or are inappropriate based upon supporting data, the director shall initiate the process or processes to assess such standards and to change or remove the standards that are shown by the assessment to be unattainable or inappropriate, consistent with this chapter.

Members of each watershed advisory group shall be representative of the industries and interests affected by the management of that watershed and shall, where appropriate, include a representative from each of the following: agriculture, mining, point source dischargers, forest products, local government, livestock, Indian tribes (for areas within reservation boundaries), water-based recreation, environmental interests and the land managing or regulatory agencies with an interest in the management of that watershed and the quality of the water bodies within it.

Members of each watershed advisory group shall serve and shall not be reimbursed for their expenses during their term of service.

**History.**

I.C., § 39-3615, as added by 1995, ch. 352,

§ 1, p. 1165; am. 1997, ch. 279, § 7, p. 828;  
am. 2005, ch. 334, § 3, p. 1045.

## STATUTORY NOTES

**Cross References.**

Basin advisory groups, § 39-3613.

§ 39-3617, as added by 1989, ch. 153, § 1, p. 363; am. 1990, ch. 305, § 1, p. 842; am. and redesisg. 1992, ch. 333, § 2, p. 999, was repealed by § 5 of S.L. 1995, ch. 352, effective July 1, 1995.

**Prior Laws.**

Former § 39-3615 which comprised I.C.,

**Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

**Effective Dates.**

Section 5 of S.L. 2005, ch. 334 declared an

emergency. Approved April 11, 2005 and applicable to all pending or subsequent subbasin assessment or total maximum daily load document filings.

**39-3616. Duties of each watershed advisory group.** — Each watershed advisory group shall generally be responsible for recommending those specific actions needed to control point and nonpoint sources of pollution within the watershed so that, within reasonable periods of time, designated beneficial uses are fully supported and other state water quality plans are achieved. Watershed advisory groups shall, as described in this chapter, consult with the director and participate in the development of each TMDL and any supporting subbasin assessment for water bodies within the watershed, and shall develop and recommend actions needed to effectively control sources of pollution. In carrying out the provisions of this section, the director and the watershed advisory groups shall employ all means of public involvement deemed necessary or required in chapter 52, title 67, Idaho Code, and shall cooperate fully with the public involvement or planning processes of other appropriate public agencies.

**History.**

I.C., § 39-3616, as added by 1995, ch. 352,

§ 1, p. 1165; am. 1997, ch. 279, § 8, p. 828; am. 2005, ch. 334, § 4, p. 1045.

**STATUTORY NOTES****Prior Laws.**

Former § 39-3616, which comprised I.C., § 39-3615, as added by 1989, ch. 153, § 1, p. 363; am. and redesign. 1992, ch. 333, § 3, p. 999, was repealed by § 5 of S.L. 1995, ch. 352, effective July 1, 1995.

**Effective Dates.**

Section 5 of S.L. 2005, ch. 334 declared an emergency. Approved April 11, 2005 and applicable to all pending or subsequent subbasin assessment or total maximum daily load document filings.

**39-3617. Designation of outstanding resource waters.** — Any person may request, in writing to the board of environmental quality, that a stream segment may be considered for designation as an outstanding resource water. The board shall recommend to the legislature those stream segments the board proposes for designation as outstanding resource waters. The legislature shall determine by law which such stream segments to designate as outstanding resource waters. Stream segments so designated shall be included in a list of outstanding resource waters to be compiled and updated by the department of environmental quality in its rules governing water quality standards. Interim status or special protection shall not be provided to streams recommended by the board prior to legislative designation as an outstanding resource water. No state agency shall delay actions, or deny or delay the processing or approval of any permit for a nonpoint source activity based on nomination of a segment for designation as an outstanding resource water, or while the legislature is considering such designation.

**History.**

I.C., § 39-3617, as added by 1995, ch. 352,  
§ 1, p. 1165; am. 2001, ch. 103, § 33, p. 253.

**STATUTORY NOTES****Cross References.**

Board of environmental quality, § 39-107.

**Prior Laws.**

Former § 39-3617, which comprised I.C.

§ 39-3616, as added by 1989, ch. 153, § 1, p. 363; am. and redesiɡ. 1992, ch. 333, § 4, p. 999, was repealed by § 5 of S.L. 1995, ch. 352, effective July 1, 1995.

**39-3618. Restriction provisions for new nonpoint source activities on outstanding resource waters.** — No person shall conduct a new or substantially modify an existing nonpoint source activity that can reasonably be expected to lower the water quality of an outstanding resource water, except for short-term or temporary nonpoint source activities which do not alter the essential character or special uses of a segment, issuance of water rights permits or licenses, allocation of water rights, or operation of water diversions or impoundments.

**History.**

I.C., § 39-3618, as added by 1995, ch. 352,  
§ 1, p. 1165.

**STATUTORY NOTES****Prior Laws.**

Former § 39-3618, which comprised I.C.,  
§ 39-3618 as added by 1992, ch. 333, § 5, p.

999, was repealed by § 5 of S.L. 1995, ch. 353, effective July 1, 1995.

**39-3619. Continuation provisions for existing activities on outstanding resource waters.** — Existing activities may continue and shall be conducted in a manner that maintains and protects the current water quality of an outstanding resource water. The provisions of this section shall not affect short-term or temporary activities that do not alter the essential character or special uses of a segment, allocation of water rights, or operations of water diversions or impoundments, provided that such activities shall be conducted in conformance with applicable laws and regulations.

**History.**

I.C., § 39-3619, as added by 1995, ch. 352,  
§ 1, p. 1165.

**STATUTORY NOTES****Prior Laws.**

Former § 39-3619, which comprised I.C.,  
§ 39-3619, as added by 1992, ch. 333, § 5, p.

99, was repealed by § 5 of S.L. 1995, ch. 352, effective July 1, 1995.

**39-3620. Approval provisions for best management practices for new nonpoint source activities on or affecting outstanding resource waters.** — No person may conduct a new nonpoint source activity on or



affecting an outstanding resource water, except for a short-term or temporary activity as set forth in section 39-3602, Idaho Code, prior to approval by the designated agency as provided in this section.

(1) Within six (6) months of designation of an outstanding resource water by the legislature, the designated agency shall develop best management practices for reasonably foreseeable new nonpoint source activities. In developing best management practices the designated agencies shall:

- (a) Solicit technical advice from state and federal agencies, research institutions, and universities and consult with affected landowners, land managers, operators, and the public;
- (b) Shall assure that all public participation processes required by law have been completed, but if no public participation process is required by law, will require public notification and the opportunity to comment; and
- (c) Recommend proposed best management practices to the board of environmental quality.

(2) The board of environmental quality and designated agencies shall adopt the proposed best management practices that are in compliance with the rules and regulations governing water quality standards, and based on the recommendations of the designated agency and the comments received during the public participation process;

(3) After adoption, these best management practices will be known as the outstanding resource water best management practices and will be published by the designated agency. Outstanding resource water approved best management practices will be reviewed and revised where needed by the designated agency every four (4) years in consultation with the department, landowners, federal managers, operators and the public to determine conformance with objectives of this chapter;

(4) Following adoption of best management practices, the designated agency shall require implementation of applicable outstanding resource water best management practices which will assure that water quality of an outstanding resource water is not lowered;

(5) Where outstanding resource water best management practices have not been adopted as set forth in subsections (1) through (4) of this section, the designated agency shall:

- (a) Assure that all public participation processes required by law have been completed, but if no public participation process is required by law, the designated agency shall provide for public notification of the new activity and the opportunity to comment;
- (b) Determine that the site-specific best management practices selected for a new nonpoint source activity are designed to ensure that water quality of the outstanding resource water is not lowered; and
- (c) Provide for review by the department that the activity is in compliance with rules and regulations governing water quality standards.

(6) When the applicable outstanding resource water best management practices are applied, the landowner, land manager, or operator applying those practices will be in compliance with the provisions of this chapter. In the event water quality is lowered, the outstanding resource water best management practices will be revised within a time frame established by the designated agency to ensure water quality is restored.

**History.** § 1, p. 1165; am. 1997, ch. 279, § 9, p. 828;  
I.C., § 39-3620, as added by 1995, ch. 352, am. 2001, ch. 103, § 34, p. 253.

**STATUTORY NOTES**

**Prior Laws.** 999, was repealed by § 5 of S.L. 1995, ch. 352,  
Former § 39-3620, which comprised I.C., effective July 1, 1995.  
§ 39-3620, as added by 1992, ch. 333, § 5, p.

**39-3621. Monitoring provisions.** — The designated agencies, in cooperation with the appropriate land management agency and the department shall ensure best management practices are monitored for their effect on water quality. The monitoring results shall be presented to the department on a schedule agreed to between the designated agency and the department.

**History.**  
I.C., § 39-3621, as added by 1995, ch. 352,  
§ 1, p. 1165.

**STATUTORY NOTES**

**Prior Laws.** redesign. 1992, ch. 333, § 6, p. 999, was re-  
Former § 39-3621, which comprised I.C., pealed by § 5 of S.L. 1995, ch. 352, effective  
§ 39-3618, as added by 1989, ch. 153, § 1, p. July 1, 1995.  
363; am. 1990, ch. 305, § 2, p. 842; am. and

**39-3622. Enforcement provisions.** — (1) The designated agency shall ensure that the approved outstanding resource water best management practices are implemented for new nonpoint source activities. If a person fails to obtain approval from a designated agency for a new nonpoint source activity as set forth in section 39-3620, Idaho Code, or if a person fails to implement approved best management practices and water quality is lowered, the designated agency may institute a civil action for an immediate injunction to halt the activity or pursue other remedies provided by law.  
(2) Nothing in this act shall restrict the enforcement authority of the department or designated agencies as provided by law.

**History.**  
I.C., § 39-3622, as added by 1995, ch. 352,  
§ 1, p. 1165.

**STATUTORY NOTES**

**Compiler's Notes.** 38-1305, 38-1306, 39-3601 to 39-3605, 39-  
The term "this act" refers to S.L. 1995, ch. 3606, and 39-3607 to 39-3639.  
352, which is codified as §§ 36-113, 38-1303,

**39-3623. Effect of rules.** — Every rule promulgated within the authority conferred in sections 39-3617 through 39-3622, Idaho Code, shall be of temporary effect and shall become permanent only by enactment of statute at the first regular session following adoption of the rule. Rules not approved in the above manner shall be rejected, null, void and of no force and effect on July 1, following submission of the rules to the legislature.  
(1) The rules promulgated within the authority conferred in this act and



adopted by the board of health and welfare on January 31, 1990, and contained in IDAPA 16.01.2003,31 and 16.01.2003,32 and 16.01.2053,01 through 16.01.2053,07, are hereby approved by the legislature.

(2) The rules promulgated within the authority conferred in this act and adopted by the board of environmental quality on November 10, 2010, and contained in IDAPA 58.01.02.010.71, 58.01.02.010.72, 58.01.02.051.03 and 58.01.02.052.09 are hereby approved by the legislature.

**History.**

I.C., § 39-3623, as added by 1995, ch. 352,  
§ 1, p. 1165; am. 2011, ch. 116, § 4, p. 320.

**STATUTORY NOTES****Amendments.**

The 2011 amendment, by ch. 116, added the subsection (1) designation to the existing provisions of the section and added subsection (2).

352, which is codified as §§ 36-113, 38-1303, 38-1305, 38-1306, 39-3601 to 39-3605, 39-3606, and 39-3607 to 39-3639.

**Effective Dates.**

Section 5 of S.L. 2011, ch. 116 declared an emergency. Approved March 22, 2011.

**Compiler's Notes.**

The term "this act" refers to S.L. 1995, ch.

**39-3624. Declaration of policy — Designation of director.** — The legislature, recognizing that water is one of the state's most valuable natural resources, has adopted water quality and public drinking water standards and authorized the director of the department of environmental quality to implement these standards. In order to provide and maintain maximum water quality in the state for domestic, industrial, agricultural (irrigation and stockwatering), mining, manufacturing, electric power generation, municipal, fish culture, artificial ground water recharge, transportation and recreational purposes and to provide safe drinking water to the public at the earliest possible date, and to conform to the expressed intent of congress to abate pollution of ground waters, streams and lakes and to provide safe drinking water to the public, the legislature declares the purpose of this chapter is to enhance and preserve the quality and value of the water resources of the state of Idaho and to assist in the prevention, control, abatement and monitoring of water pollution. In consequence of the benefits resulting to the public health, welfare and economy it is hereby declared to be the policy of the state of Idaho to protect this natural resource and to provide safe drinking water to the public by assisting in monitoring, preventing and controlling water pollution; to support and aid technical and planning research leading to the prevention and control of water pollution; to provide financial and technical assistance to municipalities and other agencies in the abatement and prevention of water pollution; and to provide financial and technical assistance to community water systems and non-profit noncommunity water systems. The director of the department of environmental quality shall administer this chapter and nothing herein shall be construed as impairing or in any manner affecting the statutory authority or jurisdiction of municipalities in providing domestic water, sewage collection and treatment.



**History.**

1970, ch. 87, § 1, p. 211; am. 1974, ch. 23, § 153, p. 633; am. 1980, ch. 208, § 1, p. 474; am. 1987, ch. 174, § 1, p. 342; am. and

redesig. 1995, ch. 352, § 8, p. 1165; am. 1999, ch. 137, § 9, p. 386; am. 2000, ch. 53, § 1, p. 103; am. 2001, ch. 103, § 35, p. 253.

**STATUTORY NOTES****Compiler's Notes.**

This section was formerly compiled as § 39-3601 and was amended and redesignated by S.L. 1995, ch. 352.

The words enclosed in parentheses so appeared in the law as enacted.

**JUDICIAL DECISIONS**

**Cited in:** State ex rel. Andrus v. Click, 97 Idaho 791, 554 P.2d 969 (1976).

**RESEARCH REFERENCES**

**C.J.S.** — 93 C.J.S., Waters, §§ 93-97, 210-213.

**A.L.R.** — Maintainability in state court of class action for relief against air and water pollution. 47 A.L.R.3d 769.

Validity and construction of statutes, ordinances, or regulations controlling discharge of industrial wastes into sewer system. 47 A.L.R.3d 1224.

Right to maintain action to enjoin public nuisance as affected by existence of pollution control agency. 60 A.L.R.3d 665.

Standing to sue for violation of state environmental regulatory statute. 66 A.L.R.4th 685.

**39-3625. Definitions.** — (1) "Sewage treatment works" means any facility for the purpose of collecting, treating, neutralizing or stabilizing sewage or industrial wastes of a liquid nature, including treatment by disposal plants, the necessary intercepting, outfall and outlet sewers, pumping stations integral to such plants or sewers, equipment and furnishings thereof and their appurtenances.

(2) "Community water system" means a public drinking water system that serves at least fifteen (15) service connections used by year-round residents or serves at least twenty-five (25) year-round residents.

(3) "Nonprofit noncommunity water system" means a public drinking water system that is not a community water system and is governed by section 501 of the Internal Revenue Code and includes, but is not limited to: state agencies, municipalities and nonprofit organizations such as churches and schools.

(4) "Construction" means the erection, building, acquisition, alteration, reconstruction, improvement or extension of sewage treatment works or best management practices, preliminary planning to determine the economic and engineering feasibility of sewage treatment works, community public water systems, nonprofit noncommunity public water systems or best management practices, the engineering, architectural, legal, fiscal and economic investigations, reports and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary in the construction of sewage treatment works, community public water systems, nonprofit noncommunity public water systems or best management practices, and the inspection and supervision of the construction of sewage

treatment works, community public water systems, nonprofit noncommunity public water systems or best management practices.

(5) "Eligible construction project" means a project for construction of sewage treatment works, community public water systems, nonprofit noncommunity public water systems or for a project for the application of best management practices as set forth in the approved state water quality plan, in related project areas:

(a) For which approval of the Idaho board of environmental quality is required under section 39-118, Idaho Code;

(b) Which is, in the judgment of the Idaho board of environmental quality, eligible for water pollution abatement assistance or for provision of safe drinking water, whether or not federal funds are then available therefor;

(c) Which conforms with applicable rules of the Idaho board of environmental quality;

(d) Which is, in the judgment of the Idaho board of environmental quality, necessary for the accomplishment of the state's policy of water purity as stated in section 39-3601, Idaho Code; and

(e) Which is needed, in the judgment of the Idaho board of environmental quality, to correct existing water pollution problems or public health hazards and to provide reasonable reserve capacity to prevent future water pollution problems or public health hazards or to provide for safe drinking water.

(6) "Municipality" means any county, city, special service district, nonprofit corporation or other governmental entity having authority to dispose of sewage, industrial wastes, or other wastes, or to provide for safe drinking water, any Indian tribe or authorized Indian tribal organization, or any combination of two (2) or more of the foregoing acting jointly, in connection with an eligible project.

(7) "Board" means the Idaho board of environmental quality.

(8) "Department" means the Idaho department of environmental quality.

(9) "Director" means the director of the Idaho department of environmental quality.

(10) "Nondomestic wastewater" means wastewater whose source of contamination is not principally human excreta.

(11) "Best management practice" means practices, techniques or measures identified in the state water quality plan which are determined to be the most effective, practicable means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality goals.

(12) "Nonpoint source pollution" means water pollution that comes from many varied, nonspecific and diffused sources and can be categorized by the general land disturbing activity that causes the pollution.

(13) "Training program" means any course of training established to provide sewage treatment plant operating personnel and public drinking water system personnel with increased knowledge to improve their ability to operate and maintain sewage treatment works and public drinking water systems.

**History.**

1970, ch. 87, § 2, p. 211; am. 1974, ch. 23, § 154; am. 1974, ch. 80, § 1, p. 1167; am. 1977, ch. 176, § 1, p. 452; am. 1980, ch. 208, § 2, p. 474; am. 1980, ch. 280, § 1, p. 727; am.

1986, ch. 66, § 1, p. 187; am. and redesign. 1995, ch. 352, § 9, p. 1165; am. 1999, ch. 137, § 10, p. 386; am. 2000, ch. 53, § 2, p. 103; am. 2001, ch. 103, § 36, p. 253.

**STATUTORY NOTES**

**Cross References.**

Board of environmental quality, § 39-107.

**Federal References.**

Section 501 of the internal revenue code, referred to in subsection (3), is codified as 26 USCS § 501.

**Compiler's Notes.**

This section was formerly compiled as § 39-3602 and was amended and redesignated by S.L. 1995, ch. 352.

**39-3626. Authorization of grants and loans — Designation of administering agency — Reservation of funds for operations — Criteria — Priority projects — Eligible projects.** — (1) The state of Idaho is hereby authorized to make grants and loans at or below market interest rates, as funds are available, to any municipality to assist said municipality in the construction of sewage treatment works, to community public water systems and nonprofit noncommunity public water systems. The state of Idaho is hereby also authorized to make loans at or below market interest rates for the implementation of a management program established under section 319 of the federal water pollution control act, as amended.

(2) The department of environmental quality may use a portion of the interest revenues from wastewater and drinking water loans, in an amount not to exceed one percent (1%) of loans outstanding, subject to annual appropriation, for operation of the wastewater and drinking water loan programs.

(3) The Idaho board of environmental quality through the department of environmental quality shall be the agency for administration of funds authorized for grants or loans under this chapter, and may reserve up to four percent (4%) of the moneys accruing annually to the water pollution control and wastewater facility loan funds to be appropriated annually for the purpose of operating the water quality programs established pursuant to this chapter. The board may also reserve up to six percent (6%) of the moneys accruing annually to the water pollution control fund to be appropriated annually for the purpose of conducting water quality studies including monitoring.

(4) In allocating state construction grants and loans under this chapter, the Idaho board of environmental quality shall give consideration to water pollution control needs, protection of public health and provision of safe drinking water.

(5) Pursuant to subsection (4) of this section, the Idaho board of environmental quality shall establish an integrated list of priority municipal sewage facility and nonpoint source pollution control projects and a list of priority community and nonprofit noncommunity public water systems.

**History.**

1970, ch. 87, § 3, p. 211; am. 1974, ch. 23,

§ 155; am. 1974, ch. 80, § 2, p. 1167; am. 1977, ch. 176, § 2, p. 452; am. 1980, ch. 208,



§ 3, p. 474; am. 1980, ch. 280, § 2, p. 727; am. 1987, ch. 174, § 2, p. 342; am. 1988, ch. 270, § 1, p. 896; am. and redesign. 1995, ch. 352, § 10, p. 1165; am. 1999, ch. 137, § 11, p. 386;

am. 2000, ch. 53, § 3, p. 103; am. 2000, ch. 363, § 1, p. 1200; am. 2001, ch. 103, § 37, p. 253; am. 2004, ch. 61, § 1, p. 279.

## STATUTORY NOTES

### Cross References.

Drinking water loan fund, § 39-7602.

Wastewater facility loan account, § 39-3629.

Water pollution control fund, § 39-3628.

### Amendments.

This section was amended by two 2000 acts which appear to be compatible and have been compiled together.

The 2000 amendment, by ch. 53, § 3 redesignated subsections A through D as subsections (1) through (4); near the end of present subsection (1), inserted “, to community public water systems and nonprofit noncommunity public water systems” preceding “or application of best”; in present subsection (3), substituted “,” for “and”, and added “and provision of safe drinking water”; in present subsection (4), substituted “subsection (3) of this section” for “subsection C.”, and added “and a list of priority community and nonprofit noncommunity public water systems”.

The 2000 amendment, by ch. 363, § 1, at the end of the first sentence of former subsection A, deleted “or application of best management practices and to provide for training of treatment plant operating personnel” following “sewage treatment works”, and added the last sentence; in former subsection D, inserted “of this section” preceding “the Idaho board of health and welfare”, substituted “establish an integrated list” for “establish a list”, and inserted “and nonprofit source pollution control” preceding “projects”.

### Federal References.

Section 319 of the federal water pollution control act, referred to in subsection (1), is codified as 33 USCS § 1329.

### Compiler's Notes.

This section was formerly compiled as § 39-3603 and was amended and redesignated by S.L. 1995, ch. 352.

**39-3627. Payments by state board of environmental quality — Contracts with municipalities and community and nonprofit noncommunity public water systems — Rules — Approval of attorney general — Audit of payments.** — (1) The Idaho board of environmental quality may make payments not to exceed ninety percent (90%) of the estimated reasonable cost of an eligible construction project funded by a grant. Payments may be made which are equal to one hundred percent (100%) of the estimated reasonable cost of an eligible construction project funded by a loan.

(2) The Idaho board of environmental quality may, in the name of the state of Idaho, enter into contracts with municipalities and community and nonprofit noncommunity public water systems and any such municipality and community and nonprofit noncommunity public water system may enter into a contract with the Idaho board of environmental quality, concerning eligible construction projects. Any such contract may include such provisions as may be agreed upon by the parties thereto, and shall include, in substance, the following provisions:

(a) An estimate of the reasonable cost of the project as determined by the Idaho board of environmental quality.

(b) An agreement by the municipality or community and nonprofit noncommunity public drinking water system, binding for the actual service life of the sewage treatment works or the actual service life of the community and nonprofit noncommunity public drinking water system:

(i) To proceed expeditiously with, and complete, the project in accordance with plans approved pursuant to section 39-118, Idaho Code.

- (ii) To commence operation of the sewage treatment works or community and nonprofit noncommunity public drinking water system on completion of the project, and not to discontinue operation or dispose of the sewage treatment works or community and nonprofit noncommunity public drinking water system without the approval of the board of environmental quality.
  - (iii) To operate and maintain the sewage treatment works or community and nonprofit noncommunity public drinking water system in accordance with applicable provisions and rules of the board.
  - (iv) To make available on an equitable basis the services of the sewage treatment works or community and nonprofit noncommunity public drinking water system to the residents and commercial and industrial establishments of areas it was designed to serve.
  - (v) To provide for the payment of the municipality's share or the community and nonprofit noncommunity public drinking water system's share of the cost of the project when the project is built using grant funds.
  - (vi) To develop and to secure the approval of the department of plans for the operation and maintenance of the sewage treatment works or community and nonprofit noncommunity public drinking water system; and of plans and programs for the recovery of the capital costs and operating expenses of the works or system.
  - (vii) To allow the board to make loans of up to one hundred percent (100%) and supplemental grants based upon financial capability to a municipality for the estimated reasonable cost of an eligible project, which may include treatment of nondomestic wastewater.
  - (viii) To provide for the accumulation of funds through the use of taxing powers, through charges made for services, through revenue bonds, or otherwise, for the purposes of: (1) capital replacement, (2) future improvement, betterment, and extension of such works occasioned by increased wastewater loadings on the works, and (3) establishing a fund dedicated solely to repayment of principal and interest of loans made subsequent to this chapter.
  - (ix) To commence annual principal and interest payments not later than one (1) year from the date construction is completed and to provide for full amortization of loans not later than thirty (30) years from the date project construction is completed.
- (c) The terms under which the Idaho board of environmental quality may unilaterally terminate the contract and/or seek repayment from the municipality or community and nonprofit noncommunity public drinking water system of sums already paid pursuant to the contract for noncompliance by the municipality with the terms and conditions of the contract and the provisions of this chapter.
- (3) The board of environmental quality may, in the name of the state of Idaho, enter into loan contracts with applicants for the implementation of nonpoint source pollution control programs. To be eligible for a loan the project proposed by an applicant must be consistent with the state nonpoint source management plan. Up to twenty percent (20%) of the total state revolving loan fund may be used for nonpoint source pollution control projects which demonstrate a benefit/nexus to a municipality.



(4) The board may adopt rules necessary for the making and enforcing of contracts hereunder and establishing procedures to be followed in applying for state construction grants or loans or training grants herein authorized as shall be necessary for the effective administration of the grants and loans program.

(5) All contracts entered into pursuant to this section shall be subject to approval by the attorney general as to form. All payments by the state pursuant to such contracts shall be made after audit and upon warrant as provided by law on vouchers approved by the director.

#### History.

1970, ch. 87, § 4, p. 211; am. 1974, ch. 23, § 156; am. 1974, ch. 80, § 3, p. 1167; am. 1977, ch. 176, § 3, p. 452; am. 1980, ch. 208, § 4, p. 474; am. 1980, ch. 280, § 3, p. 727; am. 1987, ch. 174, § 3, p. 342; am. 1988, ch. 270,

§ 2, p. 896; am. and redesign. 1995, ch. 352, § 11, p. 1165; am. 1999, ch. 137, § 12, p. 386; am. 2000, ch. 53, § 4, p. 103; am. 2000, ch. 363, § 2, p. 1200; am. 2001, ch. 103, § 38, p. 253; am. 2010, ch. 25, § 1, p. 44; am. 2011, ch. 44, § 1, p. 100.

### STATUTORY NOTES

#### Cross References.

Attorney general, § 67-1401 et seq.

#### Amendments.

This section was amended by two 2000 acts which appear to be compatible and have been compiled together.

The 2000 amendment, by ch. 53, § 4, inserted “and community and nonprofit noncommunity public water systems” in the catchline; redesignated former subsections A through D as present subsections (1) through (4); redesignated former subdivisions B.1. through B.3. as present subdivisions (2)(a) through (2)(c); redesignated former subdivisions B.2.a. through B.2.i. as present subdivision (2)(b)(i) through (2)(b)(ix); in present subsection (2), inserted “and community and nonprofit noncommunity public water systems” preceding “and any such municipality”, inserted “and community and nonprofit noncommunity public water system” preceding “may enter into a contract”, in present subdivision (2)(b), inserted “or community and nonprofit noncommunity public drinking water system” preceding “binding for the actual”, added “or the actual service life of the community and nonprofit noncommunity public drinking water system”, in present subdivision (2)(b)(ii), inserted “or community and nonprofit noncommunity public drinking water system” preceding “on completion”, inserted “or community and nonprofit noncommunity public drinking water system” preceding “without the approval”, in present subdivision (2)(b)(iii), inserted “or community

and nonprofit noncommunity public drinking water system” preceding “in accordance with”, in present subdivision (2)(b)(iv), inserted “or community and nonprofit noncommunity public drinking water system”, in present subdivision (2)(b)(v), inserted “or the community and nonprofit noncommunity public drinking water system’s share” preceding “of the cost”, in present subdivision (2)(b)(vi), inserted “or community and nonprofit noncommunity public drinking water system” preceding “and of plans and programs”; in present subdivision (2)(c), inserted “or community and nonprofit noncommunity public drinking water system” preceding “of sums already”.

The 2000 amendment, by ch. 363, § 2 added subsection C (now subsection (3)) and redesignated former subsections C and D as subsections D and E (now subsections [(4)] and [(5)]).

The 2010 amendment, by ch. 25, substituted “twenty percent (20%)” for “five percent (5%)” in the last sentence of subsection (3).

The 2011 amendment, by ch. 44, substituted “thirty (30) years” for “twenty (20) years” near the end of paragraph (2)(b)(ix).

#### Compiler’s Notes.

This section was formerly compiled as § 39-3604 and was amended and redesignated by S.L. 1995, ch. 352.

#### Effective Dates.

Section 4 of S.L. 1974, ch. 80 declared an emergency. Approved March 21, 1974.

**39-3628. Water pollution control fund established.** — There is hereby created and established in the state treasury a separate fund to be known as the water pollution control fund. The fund shall have paid into it:



- 1. The moneys provided for in section 63-3638, Idaho Code, that are paid over to the state treasurer shall be deposited to the credit of the water pollution control fund, and not to the credit of the state general fund;
- 2. All donations and grants from any source which may be used for the provisions of this act;
- 3. Any other funds which may hereafter be provided by law.

**History.**  
1970, ch. 87, § 5, p. 211; am. 1987, ch. 174, § 4, p. 342; am. 1988, ch. 270, § 3, p. 896; am. and redesisg. 1995, ch. 352, § 12, p. 1165; am. 2000, ch. 132, § 14, p. 309.

STATUTORY NOTES

**Compiler’s Notes.**  
This section was formerly compiled as § 39-3605 and was amended and redesignated by S.L. 1995, ch. 352.  
The term “this act” in subsection (2) refers to S.L. 1970, ch. 87, which is codified as §§ 39-3624 to 39-3628, 39-3630, and 39-3633.  
**Effective Dates.**  
Section 39 of S.L. 2000, ch. 132 provides: “(1) This act shall be in full force and effect on and after July 1, 2000, except that the Division of Environmental Quality shall have one (1) year thereafter to accomplish necessary changes to complete the physical transition to the new department.  
“(2) Notwithstanding any other provisions of Chapter 52, Title 67, Idaho Code, the Administrative Rules Coordinator shall redesignate all references to the Division of Environmental Quality which appear in the master rule database maintained by the coordinator, to the Department of Environmental Quality without further republication or promulgation, to comply with the provisions of this act. Until such time as a republication of a rule occurs, any reference in a rule to the Division of Environmental Quality shall mean the Department of Environmental Quality.”

**39-3629. Wastewater facility loan account established.** — There is hereby created and established in the agency asset fund in the state treasury an account to be known as the wastewater facility loan account. Surplus moneys in the wastewater facility loan account shall be invested by the state treasurer in the manner provided for idle state moneys in the state treasury under section 67-1210, Idaho Code. Interest received on all such investments shall be paid into the wastewater facility loan account. The account shall have paid into it:

- 1. Federal funds which are received by the state to provide for wastewater facility loans together with required state matching funds coming from a portion of the moneys in the water pollution control account as established in section 39-3628, Idaho Code;
- 2. All donations and grants from any source which may be used for the provisions of this section;
- 3. All principal and interest repayments of loans made pursuant to this chapter; and
- 4. Any other moneys which may hereafter be provided by law.

**History.**  
I.C., § 39-3605B, as added by 1987, ch. 174, § 5, p. 342; am. 1988, ch. 270, § 4, p. 896; am. and redesisg. 1995, ch. 352, § 13, p. 1165; am. 1996, ch. 345, § 1, p. 1155; am. 1998, ch. 16, § 1, p. 113.

STATUTORY NOTES

**Compiler’s Notes.**  
Former § 39-3605B was amended and redesignated as § 39-3629 by § 13 of S.L. 1995, ch. 352, effective July 1, 1995.

**39-3630. Appropriation of water pollution control fund — Purpose of chapter.** — Moneys in the water pollution control fund are hereby perpetually appropriated for the following purposes:

(1) To provide revenue for the payment of general obligation bonds issued pursuant to section 39-3633, Idaho Code, and general obligation refunding bonds issued pursuant to chapter 115, 1973 laws of the state of Idaho.

(2) To provide payments for contracts entered into pursuant to this chapter.

(3) To provide funds to capitalize the wastewater facility loan account established in section 39-3629, Idaho Code, including the required matching share of federal capitalization funds.

(4) To provide funds to capitalize the drinking water loan account established in section 39-7602, Idaho Code, including the required matching share of federal capitalization funds.

(5) Pending such expenditure or use, surplus moneys in the water pollution control fund shall be invested by the state treasurer in the manner provided for idle state moneys in the state treasury by section 67-1210, Idaho Code. Interest received on all such investments shall be paid into the water pollution control fund.

#### History.

1970, ch. 87, § 6, p. 211; am. 1977, ch. 176, § 4, p. 452; am. 1980, ch. 208, § 5, p. 474; am. 1980, ch. 208, § 5, p. 474; am. 1980, ch. 280, § 4, p. 727; am. 1987, ch. 174, § 6, p. 342; am.

1988, ch. 270, § 5, p. 896; am. and redesign. 1995, ch. 352, § 14, p. 1165; am. 1996, ch. 345, § 2, p. 1155; am. 1998, ch. 16, § 2, p. 113; am. 2000, ch. 132, § 15, p. 309.

### STATUTORY NOTES

#### Legislative Intent.

Section 5 of S.L. 1992, ch. 296 read: "It is legislative intent that the appropriations of moneys from the Water Pollution Control Account and the Resource Conservation and Rangeland Development Loan Account in Section 2 of this act, specifically supersede the provisions of Section 39-3606 [this section] and Section 22-2731, Idaho Code, respectively."

Section 5 of S.L. 1992, ch. 304 read: "It is legislative intent that the appropriation of moneys from the Water Pollution Control Account, in Section 2 of this act, specifically supersedes the provisions of Section 39-3606, Idaho Code [this section]."

Section 13 of S.L. 1993, ch. 384 read: "It is legislative intent that the appropriation of moneys from the Water Pollution Control Fund specifically supersedes the provisions of Section 39-3606, Idaho Code [this section]."

Section 4 of S.L. 1994, ch. 259, which contained appropriations, provided: "It is the legislative intent that the appropriation of moneys from the Water Pollution Control Fund specifically supersedes the provisions of Section 39-3606, Idaho Code [this section]."

#### Compiler's Notes.

This section was formerly compiled as § 39-3606 and was amended and redesignated by S.L. 1995, ch. 352.

Chapter 115, 1973 laws of the state of Idaho, referred to in subsection (1), relates to bonds issued by the state of Idaho and the water pollution control board and is not codified.

#### Effective Dates.

Section 39 of S.L. 2000, ch. 132 provides: "(1) This act shall be in full force and effect on and after July 1, 2000, except that the Division of Environmental Quality shall have one (1) year thereafter to accomplish necessary changes to complete the physical transition to the new department.

"(2) Notwithstanding any other provisions of Chapter 52, Title 67, Idaho Code, the Administrative Rules Coordinator shall redesignate all references to the Division of Environmental Quality which appear in the master rule database maintained by the coordinator, to the Department of Environmental Quality without further republication or promulgation, to comply with the provisions of this act. Until such time as a republication of a rule occurs, any reference in a rule to the Division of Environmental Quality shall mean the Department of Environmental Quality."



**39-3631. Appropriation of wastewater facility loan fund — Purpose of chapter.** — Moneys in the wastewater facility loan fund are hereby perpetually appropriated for the following purposes:

- (1) To provide loans and other forms of financial assistance authorized under title VI of the federal water quality act of 1987, P.L. 100-4, to any municipality for construction of sewage treatment works.
- (2) To provide funds, subject to annual federal and state appropriation and applicable federal limitations, for operation of the wastewater facility loan program by the department of environmental quality.

**History.**  
I.C., § 39-3606A, as added by 1988, ch. 270, § 6, p. 896; am. and redesisg. 1995, ch. 352,

§ 15, p. 1165; am. 1996, ch. 345, § 3, p. 1155; am. 1998, ch. 16, § 3, p. 113; am. 2001, ch. 103, § 39, p. 253.

STATUTORY NOTES

**Federal References.**  
The federal water quality act of 1978, P.L. 100-4, referred to in subsection (1), did not contain a title VI. The reference probably should be to title II of that act, which is codified as 33 USCS § 1281 et seq.

**Compiler's Notes.**  
This section was formerly compiled as § 39-3606A and was amended and redesignated by S.L. 1995, ch. 352.

**39-3632. Grants and loans for design, planning or construction — Limits on amount of grants and loans.** — (1) The board of environmental quality may divide financial assistance for eligible construction projects into separate grants, loans or a combination of grants and loans for the design, planning, and construction stages of project development. The making of a grant or loan for early stages of a project does not obligate the state to make a grant or loans for later stages of the same project.

(2) The board may make grants from the water pollution control fund; provided, that the projected payments for such grants would not cause the projected balance in the fund to fall below zero at any time. All grant payments shall be subject to the availability of moneys in the fund.

(3) The board may make loans from the wastewater facility loan fund, provided that the projected payments for such loans would not cause the projected balance in the fund to fall below zero at any time. All loan payments shall be subject to the availability of moneys in the fund.

**History.**  
I.C., § 39-3606B, as added by 1981, ch. 33, § 1, p. 52; am. 1987, ch. 174, § 7, p. 342; am. 1988, ch. 270, § 7, p. 896; am. and redesisg.

1995, ch. 352, § 16, p. 1165; am. 1996, ch. 345, § 4, p. 1155; am. 1998, ch. 16, § 4, p. 113; am. 2001, ch. 103, § 40, p. 253.

STATUTORY NOTES

**Cross References.**  
Board of environmental quality, § 39-107.  
Wastewater facility loan account, § 39-3629.  
Water pollution from control fund, § 39-3628.

**Compiler's Notes.**  
This section was formerly compiled as § 39-3606B and was amended and redesignated by S.L. 1995, ch. 352.

**39-3633. Water pollution control bonds.** — (1) Water pollution con-



trol bonds, as provided by section 5, article VIII of the constitution of the state of Idaho, shall be authorized by resolution of the state board of environmental quality. The bonds may be issued in one (1) or more series, may bear such date or dates, may be in such denomination or denominations, may mature at such time or times, may mature in such amount or amounts, may bear interest at the most advantageous rate or rates available to the state at the time offered, payable semiannually, may be in such form, either coupon or registered, may carry such registration and such conversion privileges, may be executed in such manner, may be payable in such medium of payment, at such place or places, may be subject to such terms of redemption, with or without premium, as such resolution or other resolutions may provide. The bonds, if sold to a federal agency, may be sold at a private sale at not less than par and accrued interest, without advertising the same at competitive bidding. If not sold to a federal agency, the bonds shall be sold publicly in a manner to be provided by the state board of environmental quality. The bonds shall be fully negotiable within the meaning and for all purposes of the Uniform Commercial Code.

(2) The moneys derived from the sale of any bonds shall be deposited in the state treasury to the credit of the water pollution control fund for the purposes of that fund.

(3) All bonds issued pursuant to this chapter shall be obligations of the state and shall be payable in accordance with the terms of this chapter and the provisions of section 5, article VIII of the constitution of the state of Idaho.

**History.**

1970, ch. 87, § 7, p. 211; am. 1974, ch. 23, § 157, p. 633; am. and redesign. 1995, ch. 352, § 17, p. 1165; am. 2001, ch. 103, § 41, p. 253.

**STATUTORY NOTES**

**Cross References.**

Uniform commercial code, negotiable instruments, § 28-3-101.

article VIII of the Constitution predated the adoption of § 5 of Article 8 in 1982 and apparently referred to a proposed constitutional amendment that was not adopted.

**Compiler's Notes.**

This section was formerly compiled as § 39-3607 and was amended and redesignated by S.L. 1995, ch. 352.

The references in this section, as enacted in 1970 and amended in 1974, to section 5 of

**Effective Dates.**

Section 8 of S.L. 1970, ch. 87 declared an emergency. Approved March 3, 1970.

**39-3634. Cottage site defined.** — “Cottage site” is defined as a state owned lot containing one (1) acre or less which is or may be leased by the state of Idaho primarily for recreational or homesite use by a lessee.

**History.**

1970, ch. 191, § 1, p. 555; am. and redesign. 1995, ch. 352, § 18, p. 1165.

**STATUTORY NOTES**

**Compiler's Notes.**

This section was formerly compiled as § 39-

3608 and was amended and redesignated by S.L. 1995, ch. 352.

**39-3635. Cottage site leases — Requirements — Construction of sewage disposal facilities — Connection to water and sewer district systems — Payment of charges — Notification of defaults — Satisfaction of requirements.** — (1) After the effective date of sections 39-3634 through 39-3639, Idaho Code, all cottage site leases authorized by the state of Idaho shall require that each lessee must construct, at his cost and expense, sewage disposal facilities, certified by the director of the department of environmental quality as adequate, as follows:

(a) For all new cottage or house construction completed after July 1, 1971 on any cottage site the certificate shall be issued prior to occupancy.

(b) Those cottages or houses existing on the cottage sites prior to the effective date of sections 39-3634 through 39-3639, Idaho Code, shall meet those standards required by the director of the department of environmental quality for certification within two (2) years of the effective date of sections 39-3634 through 39-3639, Idaho Code, unless a public or private sewage collection or disposal system is being planned or constructed in which case the director of the department of environmental quality may grant extensions on a year by year basis but not exceed three (3) such extensions for any one (1) cottage site.

(c) Isolated dwellings on sites situated on mining, grazing or other similar types of state land board leases shall not be affected unless within two hundred (200) yards of any flowing stream or a lake.

(2) Wherever any cottage site is located within the boundaries of a district organized for water or sewer purposes, or a combination thereof, pursuant to the provisions of chapter 32, title 42, Idaho Code, as amended, the cottage site lessee shall connect his property to the sewer system of the district within sixty (60) days after written notice from the district so to do, provided, however, no cottage site lessee shall be compelled to connect his property with such sewer system unless a service line is brought by the district to a point within two hundred (200) feet of his dwelling place. All cottage site leases hereafter issued shall require, as a condition of acceptance thereof by the lessee, that the lessee will connect his property to a district sewer system as required in this subsection (2). With respect to all cottage site leases issued subsequent to July 1, 1970, filing with the department issuing the lease of evidence of connection to the district sewer system as contemplated in this subsection (2) shall be conclusive evidence of compliance by the cottage site lessee with the requirements of subsection (1) of this section and of the provisions of the cottage site lease to provide sewage disposal facilities at the expense of the cottage site lessee. Each cottage site lessee whose cottage site is subject to connection to a district sewer system as required in this subsection (2) shall pay to the district to which the cottage site is required to be connected, in a timely manner and when due, all connection fees and charges, all monthly rates, tolls and charges, as provided by chapter 32, title 42, Idaho Code, as amended, and all special benefits payments in lieu of tax payments provided for in subsection (3) of this section.

(3) Notwithstanding that title to a cottage site remains in the state of Idaho, each cottage site lessee shall pay to any district operating a sewer system to which the cottage site is connected as provided in subsection (2) of



this section, each year in the same manner and at the same time as county taxes are paid and collected a sum of money in lieu of taxes equal to the sum which would have been paid had the cottage site been held in private ownership, hereinafter called special benefits payments. The special benefits payments shall be computed by applying the millage levy of the district to the cottage site in the ordinary course to the assessed valuation of the property as determined by the county assessor of the county in which the cottage site is located. No special benefits payments shall be imposed prior to January 1, 1980. The cottage site lessee shall have such rights of protest, hearings and appeals with respect to the valuation of the cottage site for purposes of determining the special benefits payments as if such cottage site were held in private ownership.

It shall be the duty of the county assessor to establish the value of each cottage site as compared to like property upon the request, in writing, of the district.

(4) Each water and sewer district shall immediately notify the department issuing a cottage site lease of the failure of any cottage site lessee to connect to the district sewer system, or to pay any connection fee or charge, monthly rate, toll or charge, or any special benefits payments, all as required or provided for in subsection (3) of this section. Any such notification shall set forth the amount of any such fees, charges or payments which are delinquent.

(5) Approval, pursuant to the provisions of section 39-118, Idaho Code, by the department of environmental quality of the plans and specifications of a sewer system to be constructed, acquired, improved or extended by a water and sewer district shall, as to all cottage sites connected to the district sewer system, satisfy the requirements of section 39-3637, Idaho Code.

(6) The state of Idaho, its boards, agencies or departments, shall not be liable, directly or indirectly, for any connection fees and charges, monthly rates, tolls and charges, or special benefits payments charged to cottage site lessees beyond those fees or payments collected from new lessees pursuant to section 58-304A, Idaho Code, and placed in the revolving fund created by section 58-141A, Idaho Code.

**History.**

1970, ch. 191, § 2, p. 555; am. 1971, ch. 172, § 1, p. 810; am. 1974, ch. 23, § 158, p. 633;

am. 1979, ch. 100, § 1, p. 241; am. and redesign. 1995, ch. 352, § 19, p. 1165; am. 2001, ch. 103, § 42, p. 253.

**STATUTORY NOTES****Compiler's Notes.**

This section was formerly compiled as § 39-

3609 and was amended and redesignated by S.L. 1995, ch. 352.

**JUDICIAL DECISIONS**

**Cited in:** Idaho v. Hodel, 814 F.2d 1288 (9th Cir. 1987).

**39-3636. Failure to provide sewage disposal — Penalties.** — Failure to provide certified sewage disposal as provided in section 39-3635(1),



Idaho Code, or failure to connect to a district sewer system or to pay, when due, any connection fee or charge, any monthly rate, toll or charge, or any special benefits payment, all as required and provided for in subsections (2) and (3) of section 39-3635, Idaho Code, shall result in the following:

(a) Forfeiture of lease to the state of Idaho after reasonable notice and hearing, as shall be prescribed in rules to be adopted by the department issuing the lease pursuant to the applicable provisions of chapter 52, title 67, Idaho Code, as now or hereafter in force.

(b) Loss of sewage treatment facility credit on any transfer of lease or new lease of such site after notice and hearing before the department issuing such lease.

The department issuing any cottage site lease, upon its own motion or upon receiving notice from a water and sewer district pursuant to the provisions of section 39-3635(4), Idaho Code, of the failure of a cottage site lessee to connect to a district sewer system or to pay any connection fee or charge, any monthly rate, toll or charge, or any special benefits payments, when due, is authorized to invoke either or both remedies at its discretion or may take such other action allowed by law to enforce the provisions of the lease and the requirements of section 39-3635, Idaho Code, that each cottage site lessee connect to a district sewer system and pay all fees, charges and payments when due.

History.

§ 2, p. 241; am. and redesign. 1995, ch. 352,  
1970, ch. 191, § 3, p. 555; am. 1979, ch. 100, § 20, p. 1165.

STATUTORY NOTES

Compiler's Notes.

Effective Dates.

This section was formerly compiled as § 39-3610 and was amended and redesignated by S.L. 1995, ch. 352.

Section 5 of S.L. 1979, ch. 100 declared an emergency. Approved March 20, 1979.

**39-3637. State board of environmental quality — Rules — Inspection.** — The state board of environmental quality shall adopt reasonable rules and standards for the installation and operation of cottage site sewage treatment facilities, and shall provide adequate inspection services so as not to delay unreasonably the construction of any lessee. Duplicate originals of all certificates issued by the director of the department of environmental quality shall be filed with the director of the department issuing a cottage site lease.

The director of the department of environmental quality shall maintain a site by site inventory of such sewage disposal systems that may exist. The inventory shall ascertain:

- (1) If the existing system meets the board standards. If the system meets all standards and rules for cottage sewage disposal systems a certificate shall be issued immediately.
- (2) If the system does not meet the board standards. In such case, the lessee shall be advised in writing of the actions necessary to meet the proper standards. A copy of such report shall be filed with the state agency granting the lease. The modifications, unless specifically exempted from the time

limit, as provided in sections 39-3634 through 39-3637, Idaho Code, shall be completed within two (2) years of the date of the written notice.

**History.**

1970, ch. 191, § 4, p. 555; am. 1971, ch. 172, § 2, p. 810; am. 1974, ch. 23, § 159, p. 633;

am. and redesign. 1995, ch. 352, § 21, p. 1165; am. 2001, ch. 103, § 43, p. 253.

**STATUTORY NOTES****Compiler's Notes.**

This section was formerly compiled as § 39-3611 and was amended and redesignated by S.L. 1995, ch. 352.

**Effective Dates.**

Section 3 of S.L. 1971, ch. 172 provided the act should become effective July 1, 1971.

**RESEARCH REFERENCES**

**A.L.R.** — Validity and construction of anti-water pollution control statutes and ordinances. 32 A.L.R.3d 215.

**39-3638. Final determination by issuing department authorized.** — In the event of dispute or unreasonable delay on the part of lessee or the department of environmental quality, the department issuing a cottage site lease may, upon notice and hearing, make a final determination consistent with control of water pollution and public health.

**History.**

1970, ch. 191, § 5, p. 555; am. 1974, ch. 23,

§ 160, p. 633; am. and redesign. 1995, ch. 352, § 22, p. 1165; am. 2001, ch. 103, § 44, p. 253.

**STATUTORY NOTES****Compiler's Notes.**

This section was formerly compiled as § 39-3612 and was amended and redesignated by S.L. 1995, ch. 352.

the act should be in full force and effect on and after July 1, 1971.

Section 182 of S.L. 1974, ch. 23 provided the act should be in full force and effect on and after July 1, 1974.

**Effective Dates.**

Section 6 of S.L. 1970, ch. 191 provided that

**39-3639. Continuation of cottage site lease program.** — (1) The legislature of the state of Idaho recognizes that certain state lands are presently leased for cottage site uses and are subject to leases and contracts duly authorized by law. It is legislative intent to continue to recognize such leases. However, it is also legislative intent that no new or additional lands be platted, subdivided or leased for cottage site leases, unless and until the condition and precedents listed below have been met.

(2) No additional state lands shall be further platted or subdivided, nor any new cottage site leases entered into, unless and until the following provisions have been met:

(a) The department of lands shall have completed a comprehensive planning process, as to its further participation in, and extension of, the cottage site lease program;

(b) The department of lands shall complete a comprehensive planning process as to the extension of cottage site leasing for that immediate geographic area;

(c) No new cottage site leases shall be entered into unless and until an adequate water system and an adequate sewage collection and treatment system have been installed. Both of these systems shall meet applicable state health standards and rules. (i) The costs for providing these systems shall be incorporated into the annual lease rates for the newly created serviced lots, unless other specific provisions for payment have been required by the state board of land commissioners. (ii) As an alternate means of securing the necessary funds for the construction of water and sewer systems which must meet state standards and rules, the state board of land commissioners may include as a condition of the new lease the requirement that the lessee must prepay his share of the construction costs of the water and sewer system. In all cases, however, such prepayment shall be made, and adequate water and sewer systems shall be installed and in operation before such cottage sites may be inhabited.

(3) The provisions of subsection (1) herein shall not apply to unimproved lots within cottage subdivisions in which at least eighty per cent (80%) of the lots already have cottages upon them.

History.

§ 1, p. 280; am. and redesign. 1995, ch. 352, § 23, p. 1165.

I.C., § 39-3613, as added by 1975, ch. 128,

STATUTORY NOTES

Cross References.

Department of lands, § 58-101 et seq.

State board of land commissioners, Idaho Const., Art. IX, § 7 and § 58-101 et seq.

Compiler's Notes.

This section was formerly compiled as § 39-3613 and was amended and redesignated by S.L. 1995, ch. 352.

JUDICIAL DECISIONS

Cited in: Idaho v. Hodel, 814 F.2d 1288 (9th Cir. 1987).

CHAPTER 37

ANATOMICAL TISSUE, ORGAN, FLUID DONATIONS

SECTION.

39-3701. Blood donations by minors.

39-3702. Exclusion or modification of warranties on anatomical tissue, organ, fluid donation services.

SECTION.

39-3703. Anatomical parts control.

**39-3701. Blood donations by minors.** — (1) Any person who is seventeen (17) years of age or older shall be eligible to donate blood in a voluntary and noncompensatory blood program without the necessity of obtaining parental permission or authorization.

(2) A person who is sixteen (16) years of age but not seventeen (17) years of age may donate blood in a voluntary and noncompensatory blood program if the parent, guardian or custodian of the child has given informed consent to the blood donation. After informed consent has been given, the parent, guardian or custodian of a child may revoke such consent at any time by clearly communicating such revocation to staff of the blood donation



program. When consent has been revoked, the blood donation facility shall promptly discontinue any further steps for blood donation. The blood donation program may require the parent, guardian or custodian to sign a written revocation of consent regarding the donation of blood.

**History.**

1970, ch. 27, § 1, p. 53; am. 1978, ch. 13, § 1, p. 25; am. 2011, ch. 126, § 1, p. 353.

**STATUTORY NOTES****Amendments.**

The 2011 amendment, by ch. 126, added the subsection (1) designation to the existing provisions of the section and added subsection (2).

**Effective Dates.**

Section 2 of S.L. 1970, ch. 27 declared an emergency. Approved February 17, 1970.

Section 2 of S.L. 1978, ch. 13 declared an emergency. Approved February 15, 1978.

**39-3702. Exclusion or modification of warranties on anatomical tissue, organ, fluid donation services.** — The procurement, processing, storage, distribution, or use of whole blood, plasma, blood products, blood derivatives, bodily tissue, tissue products, organs, parts of organs or products derived therefrom for the purpose of injecting, transfusing or transplanting the same, or any of them, into the human body for any purpose whatsoever is declared to be the rendering of a service by any person or entity (except a paid blood, organ or tissue donor, or a blood, organ or tissue bank operated for profit) participating therein and does not constitute a sale, whether or not any consideration is given therefor, and the implied warranties of merchantability and fitness for a particular purpose shall not be applicable as to a defect that cannot be detected or removed by reasonable use of standard established scientific procedures or techniques, except such person or entity shall remain liable for his or its own negligence or willful misconduct only.

**History.**

I.C., § 39-3702, as added by 1971, ch. 24, § 2, p. 60; am. 1987, ch. 148, § 2, p. 294.

**STATUTORY NOTES****Compiler's Notes.**

Section 1 of S.L. 1987, ch. 148 read: "The availability of anatomical parts, including whole blood, plasma, blood products, blood derivatives, anatomical tissue, tissue products, organs, parts of organs or products derived therefrom, being important to the health and welfare of the people of the state of Idaho, it is hereby declared to be the public policy of the state that the health and welfare of the people will be promoted by limiting the legal liability arising out of the scientific procedures relating to blood services and donor services relating to other bodily tissue, tissue products, organs, parts of organs or products derived therefrom and their use to instances of negligence or willful misconduct, and to remove

such services from the imposition of any legal liability without fault as more particularly hereinafter set forth."

Section 1 of S.L. 1971, ch. 24 read: "Declaration of policy. The availability of whole blood, plasma, blood products and blood derivatives being important to the health and welfare of the people of the state of Idaho, it is hereby declared to be the public policy of the state that the health and welfare of the people will be promoted by limiting the legal liability arising out of the scientific procedures relating to blood and its use to instances of negligence or willful misconduct, and to remove such services from the imposition of any legal liability without fault as more particularly hereinafter set forth."

The words in parentheses so appeared in the law as enacted.

**Effective Dates.**

Section 3 of S.L. 1971, ch. 24 declared an emergency. Approved February 15, 1971.

Section 3 of S.L. 1987, ch. 148 declared an emergency. Approved March 27, 1987.

**JUDICIAL DECISIONS**

**Burden of Proof.**

Hemophiliac who was infected with human immunodeficiency virus was required to prove which of the two providers of the clotting agent Factor VIII caused the injury in order

to recover under negligence theory. *Doe v. Cutter Biological*, 852 F. Supp. 909 (D. Idaho 1994), appeal dismissed, 89 F.3d 844 (9th Cir. 1996).

**RESEARCH REFERENCES**

**A.L.R.** — Liability of hospital, physician, or other individual medical practitioner for injury or death resulting from blood transfusion. 20 A.L.R.4th 136.

Liability of blood supplier or donor for in-

jury or death resulting from blood transfusion. 24 A.L.R.4th 508.

Validity, construction, and application of blood shield statutes. 75 A.L.R.5th 229.

**39-3703. Anatomical parts control.** — No anatomical parts of human bodies, including whole blood, plasma, blood products, blood derivatives, body tissue, organs, parts of organs or products derived therefrom, and including semen, ova and embryos, shall be used for any purpose of injecting, transfusing or transplanting into a human body unless such anatomical parts or the donor have been examined for acquired immunodeficiency syndrome (AIDS), AIDS related complexes (ARC), or other manifestations of human immunodeficiency virus (HIV) infection, and a test is negative for the presence of HIV antibodies or antigens.

The director of the department of health and welfare shall promulgate rules to fully implement the requirements of this section.

**History.**

I.C., § 39-3703, as added by 1988, ch. 17, § 1, p. 19.

**STATUTORY NOTES**

**Cross References.**

Director of department of health and welfare, § 56-1002 et seq.

**Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

**CHAPTER 38**  
**MINORS — CONSENT TO TREATMENT**

**SECTION.**

39-3801. Infectious, contagious, or communicable disease — Medical treat-

ment of minor 14 years of age or older — Consent of parents or guardian unnecessary.

**39-3801. Infectious, contagious, or communicable disease — Medical treatment of minor 14 years of age or older — Consent of parents or guardian unnecessary.** — Notwithstanding any other provision of law, a minor fourteen (14) years of age or older who may have come

into contact with any infectious, contagious, or communicable disease may give consent to the furnishing of hospital, medical and surgical care related to the diagnosis or treatment of such disease, if the disease or condition is one which is required by law, or regulation adopted pursuant to law, to be reported to the local health officer. Such consent shall not be subject to disaffirmance because of minority. The consent of the parent, parents, or legal guardian of such minor shall not be necessary to authorize hospital, medical and surgical care related to such disease and such parent, parents, or legal guardian shall not be liable for payment for any care rendered pursuant to this section.

**History.**

1971, ch. 107, § 1, p. 227.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 1971, ch. 107 declared an emergency. Approved March 12, 1971.

## CHAPTER 39

### STERILIZATION

**SECTION.**

- 39-3901. Legislative intent.
- 39-3902. Definitions.
- 39-3903. Sterilization of persons subject to this chapter.
- 39-3904. Initiation of proceeding.
- 39-3905. Appointment of counsel.
- 39-3906. Notice.
- 39-3907. Referral to the evaluation committee.
- 39-3908. Hearing.

**SECTION.**

- 39-3909. Criteria.
- 39-3910. Authorized sterilization procedure.
- 39-3911. Appeals.
- 39-3912. Evaluation committee.
- 39-3913. Confidentiality of and access to records.
- 39-3914. Civil and criminal immunity — Exception.
- 39-3915. Refusal to participate in sterilization.

**39-3901. Legislative intent.** — The legislature of the state of Idaho acknowledges that sterilization procedures are highly intrusive, generally irreversible and represent potentially permanent and highly significant consequences for individuals incapable of giving informed consent. The legislature recognizes that certain legal safeguards are required to prevent indiscriminate and unnecessary sterilization of such individuals, and to assure equal access to desired medical procedures for all Idaho citizens.

**History.**

I.C., § 39-3901, as added by 2003, ch. 189, § 2, p. 511.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-3901, which was comprised 1971, ch. 338, § 2, p. 1308; am. 1994, ch. 177,

§ 1, p. 415, was repealed by S.L. 2003, ch. 189, § 1.



**39-3902. Definitions.** — For purposes of this chapter, the following words and terms have the meanings hereinafter stated:

(1) “Emergency medical treatment” means immediate medical intervention required, according to the prevailing medical standards of judgment and practice within the community, because of the medical condition of the person subject to this chapter.

(2) “Evaluation committee” means an interdisciplinary team consisting of at least four (4) individuals qualified by education and training to evaluate an individual as required by the provisions of this chapter, and an advocate designated by the person subject to this chapter. Each committee must include: two (2) social workers, at least one (1) of whom must be a master’s level; a clinical psychologist or a psychiatrist; and a physician.

(3) “Informed assent” means a process by which a person subject to this chapter who lacks or is alleged to lack the capacity to consent to sterilization is given a fair opportunity to acknowledge the nature, risks and consequences of the procedures and, insofar as he or she is able to, indicates willingness and choice to undergo sterilization.

(4) “Interested person” means an interested, responsible adult including, but not limited to, the legal guardian, spouse, parent, legal counsel, adult child, or next of kin of a person subject to this chapter, or if none of these are available, the department of health and welfare.

(5) “Medically necessary” means that, according to the prevailing medical standards of judgment and practice within the community, the procedure is reasonably calculated to prevent or treat conditions in the person subject to this chapter that endanger life, cause severe pain, or cause functionally significant deformity or malfunction, and for which there is not an equally effective alternative course of treatment available or suitable.

(6) “Person subject to this chapter” means all persons, except adults who may consent to their own treatment pursuant to chapter 45, title 39, Idaho Code. Adults who are alleged to lack this capacity are also persons subject to this chapter.

(7) “Physician” means a person duly licensed in the state of Idaho to practice medicine and surgery without restriction pursuant to laws of the state of Idaho.

(8) “Records” includes, but is not limited to, all court files of judicial proceedings brought under this chapter, written clinical information, observations and reports, or fiscal documents relating to a person subject to this chapter who has undergone or is about to undergo sterilization and which are related to the sterilization.

(9) “Sterilization” means any medical or surgical operation or procedure which can be expected to result in a patient’s permanent inability to reproduce.

**History.**

I.C., § 39-3902, as added by 2003, ch. 189,

§ 2, p. 511; am. 2005, ch. 120, § 5, p. 380; am. 2009, ch. 130, § 1, p. 409.

## STATUTORY NOTES

**Cross References.**

Department of health and welfare, § 56-1001 et seq.

**Prior Laws.**

Former § 39-3902, which comprised 1971, ch. 338, § 3, p. 1308, was repealed by S.L. 2003, ch. 189, § 1.

**Amendments.**

The 2009 amendment, by ch. 130, substituted "persons" for "adults" in the first sentence in subsection (6).

**39-3903. Sterilization of persons subject to this chapter.** — Persons subject to this chapter have the legal right to be sterilized following the entry of an order providing for sterilization and the expiration of the time allowed by law for perfecting an appeal. In no event shall persons subject to this chapter be sterilized without court approval in accordance with this chapter unless sterilization occurs as part of emergency medical treatment.

**History.**

I.C., § 39-3903, as added by 2003, ch. 189, § 2, p. 511.

## STATUTORY NOTES

**Prior Laws.**

Former § 39-3903, which was comprised 1971, ch. 338, § 4, p. 1308; am. 1994, ch. 177,

§ 2, p. 415, was repealed by S.L. 2003, ch. 189, § 1.

**39-3904. Initiation of proceeding.** — A person subject to this chapter or any interested person may file a petition in the district court in which the person subject to this chapter resides, alleging that said person meets the requirements for sterilization.

**History.**

I.C., § 39-3904, as added by 2003, ch. 189, § 2, p. 511.

## STATUTORY NOTES

**Prior Laws.**

Former § 39-3904, which was comprised

1971, ch. 338, § 5, p. 1308, was repealed by S.L. 2003, ch. 189, § 1.

**39-3905. Appointment of counsel.** — Persons subject to this chapter shall have counsel at all stages of the proceedings provided for in this chapter. Unless independently provided for by the persons subject to this chapter, counsel shall be appointed by the district court which shall also conduct an investigation to determine whether or not the person has funds in trust or otherwise to pay reasonable compensation to counsel. If the investigation discloses that the person is without such funds, the court shall order that counsel be paid reasonable compensation at public expense.

**History.**

I.C., § 39-3905, as added by 2003, ch. 189, § 2, p. 511.

**STATUTORY NOTES**

**Prior Laws.** 1971, ch. 338, § 6, p. 1308, was repealed by  
Former § 39-3905, which was comprised S.L. 2003, ch. 189, § 1.

**39-3906. Notice.** — The court shall order that the petition be served personally upon the person subject to this chapter, his or her guardian or parent, his or her counsel, his or her guardian ad litem, and such other persons as the court may designate.

**History.**  
I.C., § 39-3906, as added by 2003, ch. 189,  
§ 2, p. 511.

**STATUTORY NOTES**

**Prior Laws.** 1971, ch. 338, § 7, p. 1308, was repealed by  
Former § 39-3906, which was comprised S.L. 2003, ch. 189, § 1.

**39-3907. Referral to the evaluation committee.** — The court shall refer the petition to the evaluation committee for review and recommendation.

**History.**  
I.C., § 39-3907, as added by 2003, ch. 189,  
§ 2, p. 511.

**STATUTORY NOTES**

**Prior Laws.** 1971, ch. 338, § 8, p. 1308, was repealed by  
Former § 39-3907, which was comprised S.L. 2003, ch. 189, § 1.

**39-3908. Hearing.** — (1) The court shall set a hearing on the petition upon receipt of the recommendation of the evaluation committee and shall order that copies of the evaluation committee's reports and notice of the time and place of the hearing be provided the person subject to this chapter, their guardian, their counsel, their guardian ad litem, and such other persons as the court may designate.

(2) The person subject to this chapter is entitled to be present at the hearing, and to see and hear all evidence bearing on the petition. The person subject to this chapter may be absent from the hearing if he or she is unwilling or is unable to participate.

(3) A hearing shall be held in district court with the right of cross-examination preserved at all stages. The members of the evaluation committee may be subpoenaed and questioned by any party to the proceedings. Any party to the proceedings may submit additional evidence.

(4) The court must enter findings of fact and conclusions of law as well as an order either directing sterilization of the person subject to this chapter or dismissing the petition for insufficiency of evidence or any other reason.

**History.**  
I.C., § 39-3908, as added by 2003, ch. 189,  
§ 2, p. 511.



## STATUTORY NOTES

**Prior Laws.**

1971, ch. 338, § 9, p. 1308, was repealed by  
Former § 39-3908, which was comprised S.L. 2003, ch. 189, § 1.

**39-3909. Criteria.** — (1) The court may grant an order authorizing a specific sterilization procedure if the court finds by clear and convincing evidence that the person subject to this chapter is functionally capable of giving and withholding informed assent to the proposed sterilization and has given informed assent to the proposed sterilization, or that the person is functionally incapable of giving or withholding informed assent but sterilization is in the best interest of the person.

(2) The person subject to this chapter assents to sterilization if the person manifests an uncoerced willingness to undergo sterilization after being fully informed of the nature, risks, consequences and alternatives to the procedure. A person who lacks the capacity to manifest an uncoerced willingness or unwillingness to sterilization cannot assent to the procedure. To determine whether the person is capable of giving informed assent, the court shall consider whether the person understands and appreciates:

- (a) The causal relationship between sexual intercourse and pregnancy or parenthood;
- (b) The causal relationship between sterilization and the impossibility of pregnancy or parenthood;
- (c) The nature of the sterilization operation including the pain, discomfort and risks of the procedure;
- (d) The probable permanency and irreversibility of the sterilization procedure;
- (e) All medically approved alternatives to sterilization;
- (f) The consequences of initiation of pregnancy or becoming pregnant, mothering or fathering a child, and becoming a parent; and
- (g) The power to change one's mind about being sterilized at any time before the procedure is performed.

To assure the adequacy of the person's informed assent, evidence shall be presented showing that the person received appropriate counseling from the physician who will perform the sterilization and at least one (1) other qualified independent counselor such as a social worker with a master's degree, a clinical nurse specialist, or a licensed psychologist or psychiatrist. The counseling shall cover the benefits or advantages to sterilization and conversely the losses and disadvantages of sterilization including the feelings, values and lifestyle changes attendant with sterilization.

Witnesses who attest in court as to the soundness of informed assent shall comment on and assess the person's understanding of each issue and shall comment on and assess the degree to which the person expresses an uncoerced willingness to accept each risk and consequence. Any reservations or resistance expressed or otherwise evidenced by the person shall be disclosed to the court.

(3) The persons subject to this chapter may be sterilized if the court finds by clear and convincing evidence that:

- (a) The person is functionally incapable of giving or withholding informed assent and that the incapacity is not likely to change in the foreseeable future; and

(b) Sterilization is in the best interest of the person.

(4) To determine whether sterilization is in the best interest of the person subject to this chapter the court shall find by clear and convincing evidence that:

(a) The person is likely to be fertile. Fertility may be conclusively presumed if the medical evidence indicates normal development of the sexual organs, and the evidence does not otherwise raise doubts about fertility;

(b) There is a likelihood that the person will engage in sexual intercourse;

(c) The nature and extent of the person's disability, as determined by empirical evidence and not solely the basis of standardized tests, renders him or her permanently incapable of caring for a child, even with reasonable assistance;

(d) The person will suffer severe physical or psychological harm if he or she were to parent a child, which may include any harm occurring from the removal of the child from the person's custody;

(e) The person will not suffer severe physical or psychological harm from the sterilization;

(f) Less restrictive alternatives to sterilization, both at the present time and under foreseeable future circumstances, are not feasible or medically advisable;

(g) The proposed method of sterilization entails the least invasion of the body of the individual; and

(h) Scientific or medical advances will not occur within the foreseeable future which will materially make possible the improvement of the person's condition with respect to sterilization.

**History.**

I.C., § 39-3909, as added by 2003, ch. 189,  
§ 2, p. 511.

**STATUTORY NOTES**

**Prior Laws.**

1971, ch. 338, § 10, p. 1308, was repealed by  
Former § 39-3909, which was comprised S.L. 2003, ch. 189, § 1.

**39-3910. Authorized sterilization procedure.** — A sterilization procedure authorized under this chapter shall not include hysterectomy or castration unless the court finds by clear and convincing evidence that hysterectomy or castration is medically necessary treatment, independent of the need for sterilization. No sterilization procedure authorized under this chapter shall be performed by any person other than a physician.

**History.**

I.C., § 39-3910, as added by 2003, ch. 189,  
§ 2, p. 511.

**STATUTORY NOTES**

**Prior Laws.**

1973, ch. 200, § 1, p. 453, was repealed by  
Former § 39-3910, which was comprised S.L. 2003, ch. 189, § 1.

**39-3911. Appeals.** — The order approving, denying or otherwise disposing of the petition for sterilization shall be appealable to the supreme court of Idaho. Such appeal may be perfected in the same manner as in civil actions. In the case of appeals from any order directing sterilization, the order of the district court shall be stayed pending disposition of such appeal and no sterilization shall take place until after the expiration of the time allowed by law for perfecting appeal.

**History.**

I.C., § 39-3911, as added by 2003, ch. 189,  
§ 2, p. 511.

**39-3912. Evaluation committee.** — (1) There is established the evaluation committee composed of persons contracted by or employees of the department of health and welfare.

(2) The committee shall review and make recommendations to the court on all petitions for sterilization. In making its recommendation to the court, the committee shall investigate and determine whether the person subject to this chapter is capable of giving informed assent and, if not, whether sterilization is in the best interest of the person. The committee shall consider the criteria set forth in section 39-3909, Idaho Code, in determining whether the person is capable of providing informed assent or whether sterilization is in the best interest of the person.

(3) The committee or designated member of the committee may interview or request a written statement from the person subject to this chapter, physicians, relatives, concerned individuals, and others who, in the committee member's judgment, possess relevant information concerning the petition for sterilization. Conversely, the person subject to this chapter, the guardian ad litem, the petitioner, or any other person may request to speak to the committee or submit a written statement to the committee concerning the proposed sterilization.

(4) The committee shall submit a report in writing to the court containing its recommendations together with supporting documents. Committee members who do not concur with the majority recommendation shall submit a report in writing to the court detailing the basis for their dissent.

**History.**

I.C., § 39-3912, as added by 2003, ch. 189,  
§ 2, p. 511.

**STATUTORY NOTES**

**Cross References.**

Department of health and welfare, § 56-1001 et seq.

**39-3913. Confidentiality of and access to records.** — (1) Records developed by the evaluation committee and records contained in court files of judicial proceedings brought under this chapter shall be governed by the provisions of chapter 3, title 9, Idaho Code.



(2) The administrative director of the courts shall compile statistics for each calendar year, accessible to the public, including:

- (a) The total number of petitions filed pursuant to this chapter;
- (b) The number of petitions in which the evaluation committee recommended a procedure and the number of petitions in which the evaluation committee recommended against a procedure;
- (c) The number of petitions granted by the court;
- (d) For categories described in paragraphs (b) and (c) of this subsection, the number of appeals taken from the court's order in each category; and
- (e) For each of the categories set out in paragraph (d) of this subsection, the number of cases for which the district court's order was affirmed and the number of cases for which the district court's order was reversed.

**History.**

I.C., § 39-3913, as added by 2003, ch. 189,  
§ 2, p. 511; am. 2003, ch. 300, § 1, p. 826.

**STATUTORY NOTES**

**Cross References.**

Administrative director of the courts, § 1-611.

**39-3914. Civil and criminal immunity — Exception.** — When an operation shall have been performed in compliance with the provisions of this law, no physician duly licensed to, without restriction, practice medicine and surgery in this state or other person legally participating in the execution of the provisions of this chapter shall be liable civilly or to criminal prosecution on account of such operation or participation therein, except in the case of negligence in the performance of said procedures. Nothing in this chapter shall be construed so as to prevent sterilization of persons subject to this chapter as part of emergency medical treatment or the voluntary sterilization of a person competent to give his or her consent.

**History.**

I.C., § 39-3914, as added by 2003, ch. 189,  
§ 2, p. 511.

**39-3915. Refusal to participate in sterilization.** — No hospital shall be required to furnish facilities or admit any patient for sterilization procedures if, upon determination by its governing board, it elects not to do so. No physician, nurse, technician or other employee of any hospital, physician or governmental agency shall be required to assist or participate in any sterilization procedure if he or she, for religious or moral reasons, objects thereto. Any such objection shall be made in writing and shall state the reason for such objection. No refusal to accept a patient for sterilization procedures shall form the basis for any claim for damages or for recriminatory action against the declining person or hospital.

**History.**

I.C., § 39-3915, as added by 2003, ch. 189,  
§ 2, p. 511.

**CHAPTER 40****MANUFACTURED HOMES — STANDARDS****SECTION.**

- 39-4001. Enforcement of law.  
39-4002. Compliance with law required.  
39-4003. Administrator — Duties.  
39-4003A. Right of entry.  
39-4004. Inspection and enforcement fees —  
Schedule authorized.  
39-4005. Issuance of insignia — Cost. [Re-  
pealed.]  
39-4006. Conversion of system following is-  
suance of insignia prohibited. [Repealed.]  
39-4007. Reciprocity of standards with other  
states. [Repealed.]

**SECTION.**

- 39-4008. Exemption from local ordinances or  
regulations. [Repealed.]  
39-4009. Certification of plant supervisor —  
Basis of examination — Issu-  
ance of certificate of compe-  
tency — Fees — Number of  
supervisors required — Auto-  
matic certification. [Re-  
pealed.]  
39-4010. Warranty by manufacturers.  
39-4011. Violations.

**39-4001. Enforcement of law.** — The administrator of the division of building safety shall enforce the provisions of this chapter. It shall be the responsibility and duty of the state building code board to assist the administrator in the administration and enforcement of the provisions of this chapter as hereinafter provided.

**History.**

1971, ch. 70, § 2, p. 157; am. 1974, ch. 39,  
§ 50, p. 1023; am. 1995, ch. 267, § 1, p. 856;

am. 1996, ch. 421, § 24, p. 1406; am. 2006, ch.  
79, § 2, p. 239.

**STATUTORY NOTES****Cross References.**

Administrator of the division of building  
safety, § 54-2607.

Idaho building code board, § 39-4106 et  
seq.

**Amendments.**

The 2006 amendment, by ch. 79, substi-  
tuted "building code" for "electrical and  
plumbing" in the second sentence.

**Compiler's Notes.**

Section 1 of S.L. 1971, ch. 70 read: "The  
state of Idaho has numerous manufacturers

of mobile homes and recreational vehicles. In  
order to protect the users of mobile homes and  
recreational vehicles and encourage manufac-  
turing of these units in accordance with rea-  
sonable standards of care, it is the intention of  
this legislature to adopt manufacturing stan-  
dards and enforce them as a part of the  
industrial growth of the state of Idaho. Con-  
sistent with the standards being established,  
certain personnel will be qualified in the  
manufacturing plants to assure that the man-  
ufacturing process meets the standards estab-  
lished by this act."

**RESEARCH REFERENCES**

**Am. Jur.** — 53A Am. Jur. 2d, Mobile Homes  
and Trailer Parks, § 1 et seq.

**A.L.R.** — Liability of owner or operator of  
park for mobile homes or trailers for injuries  
caused by appliances or other instruments on  
premises. 41 A.L.R.3d 324.

Landlord supplying electricity, gas, water,  
or similar facility to tenant as subject to  
utility regulation. 75 A.L.R.3d 1204.

Liability for injury or death allegedly  
caused by defect in mobile home or trailer. 81  
A.L.R.3d 421.

**39-4002. Compliance with law required.** — It is unlawful for any  
person, firm, partnership, association or corporation to sell or offer for sale

within this state any manufactured home that is not manufactured in compliance with this chapter after March 8, 1971.

**History.**

1971, ch. 70, § 3, p. 157; am. 1988, ch. 264, § 3, p. 519; am. 1995, ch. 267, § 2, p. 856; am. 2006, ch. 79, § 3, p. 238.

**STATUTORY NOTES****Amendments.**

The 2006 amendment, by ch. 79, substituted “this chapter” for “this act.”

**JUDICIAL DECISIONS**

**Cited in:** Mico Mobile Sales & Leasing, Inc. v. Skyline Corp., 97 Idaho 408, 546 P.2d 54 (1975).

**39-4003. Administrator — Duties.** — The administrator shall by rule define the term “manufactured home” to be consistent with 24 CFR 3280 (housing and urban development manufactured home construction and safety standards) and may delegate enforcement and administration of those standards to the Idaho building code board.

**History.**

1971, ch. 70, § 4, p. 157; am. 1972, ch. 168, § 1, p. 417; am. 1974, ch. 39, § 51, p. 1023; am. 1988, ch. 264, § 4, p. 519; am. 1995, ch. 267, § 3, p. 856; am. 2006, ch. 79, § 4, p. 238.

**STATUTORY NOTES****Cross References.**

Idaho building code board, § 39-4106 et seq.

**Amendments.**

The 2006 amendment, by ch. 79, rewrote the section, which formerly read: “**Director of department — Duties.** (1) The director shall by rule define the term ‘manufactured home’ to be consistent with national standards and the use of the term in industry.

“(2) Such rule shall be enforced by the director who may delegate to the Idaho elec-

trical board and the Idaho plumbing board the administration and enforcement of such health and safety standards as involve plumbing, heat producing and electrical systems.”

**Compiler’s Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

**Effective Dates.**

Section 2 of S.L. 1972, ch. 168 provided the act shall be effective on and after July 1, 1972.

**JUDICIAL DECISIONS**

**Cited in:** Mico Mobile Sales & Leasing, Inc. v. Skyline Corp., 97 Idaho 408, 546 P.2d 54 (1975).

**39-4003A. Right of entry.** — In order to carry out the purposes of this chapter, the administrator or his authorized representative shall, during regular working hours and at other reasonable times, have the right of entry to conduct the inspections required by this chapter; the right of entry to make inspections to carry out the duties and responsibilities as an in-plant inspection agency (IPIA) by the authority granted by the U.S. department of housing and urban development pursuant to 24 CFR 3282.352 and 362; and



the right of entry to make inspections to carry out the duties and responsibilities as a state administrative agency (SAA) by the authority granted by the U.S. department of housing and urban development pursuant to 24 CFR 3282.305.

**History.**

I.C., § 39-4003A, as added by 1978, ch. 118,

§ 1, p. 269; am. 1980, ch. 108, § 1, p. 245;

am. 2006, ch. 79, § 5, p. 238.

**STATUTORY NOTES**

**Amendments.**

The 2006 amendment, by ch. 79, substituted "administrator" for "director" and "24 CFR 3282.352 and 362" for "24 CFR 3282.362(e)(2)."

**Compiler's Notes.**

The letters "IPIA" and "SAA" enclosed in parentheses so appeared in the law as enacted.

**39-4004. Inspection and enforcement fees — Schedule authorized.** — (1) The administrator is authorized to establish a schedule of fees to pay the cost of inspection and enforcement of this chapter without recourse to tax subsidies. Such fee schedule shall be consistent with the actual cost of maintaining the program.

(2) The administrator shall be authorized to participate in the fee distribution system of the U.S. department of housing and urban development set out in 24 CFR 3282. The administrator shall establish a monitoring inspection fee in an amount established by the secretary of the U.S. department of housing and urban development. This monitoring inspection fee shall be an amount paid by each manufactured home manufacturer in the state for each manufactured home produced by the manufacturer in the state. This fee shall be in addition to any in-plant inspection agency (IPIA) fees assessed by the administrator, which shall be consistent with the actual cost of providing such inspections.

(3) The monitoring inspection fee shall be paid by the manufacturer to the secretary of the U.S. department of housing and urban development who shall distribute the fees collected from all manufactured home manufacturers among the approved and conditionally-approved states based on the number of new manufactured homes whose first location after leaving the manufacturing plant is on the premises of a distributor, dealer, or purchaser in that state.

**History.**

1971, ch. 70, § 5, p. 157; am. 1974, ch. 39, § 52, p. 1023; am. 1980, ch. 108, § 2, p. 245;

am. 1988, ch. 264, § 5, p. 519; am. 2006, ch. 79, § 6, p. 238.

**STATUTORY NOTES**

**Amendments.**

The 2006 amendment, by ch. 79, added the subsection (1) designation to the first paragraph; redesignated former subsections (1) and (2) as present subsections (2) and (3); substituted "administrator" for "director" throughout the section; and deleted "Part" following "24 CFR" in present subsection (2).

**Federal References.**

The monitoring inspection fee, referred to in this section, is established by 24 CFR § 3282.307.

**Compiler's Notes.**

The letters "IPIA" enclosed in parentheses so appeared in the law as enacted.

**39-4005. Issuance of insignia — Cost. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1971, ch. 70, § 6, p. 157; am. 1974, ch. 39, § 53, p. 1023;

am. 1988, ch. 264, § 6, p. 519, was repealed by S.L. 1995, ch. 267, § 4, effective July 1, 1995.

**39-4006. Conversion of system following issuance of insignia prohibited. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1971, ch. 70, § 7, p. 157; am. 1974, ch. 39, § 54, p. 1023;

am. 1988, ch. 264, § 7, p. 519; am. 1995, ch. 267, § 5, p. 856, was repealed by S.L. 2006, ch. 79, § 7.

**39-4007. Reciprocity of standards with other states. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1971, ch. 70, § 8, p. 157; am. 1974, ch. 39, § 55, p. 1023;

am. 1988, ch. 264, § 8, p. 519, was repealed by S.L. 1995, ch. 267, § 4, effective July 1, 1995.

**39-4008. Exemption from local ordinances or regulations. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1971, ch. 70, § 9, p. 157; am. 1988, ch. 264, § 9, p. 519; am.

1995, ch. 267, § 6, p. 856, was repealed by S.L. 2006, ch. 79, § 8.

**39-4009. Certification of plant supervisor — Basis of examination — Issuance of certificate of competency — Fees — Number of supervisors required — Automatic certification. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1971, ch. 70, § 10, p. 157; am. 1974, ch. 39, § 56, p. 1023;

am. 1988, ch. 264, § 10, p. 519; am. 1995, ch. 267, § 7, p. 856, was repealed by S.L. 2006, ch. 79, § 9.

**39-4010. Warranty by manufacturers. —** Any person, firm, partnership, association or corporation constructing, in whole or in part, a manufactured home in this state, or constructing outside of this state but selling at retail in this state, shall issue a warranty in writing to the buyer containing the following terms:

(1) That the manufactured home is free from any substantial defects in materials or workmanship in the structure, plumbing, heating and electri-

cal systems and all appliances and other equipment installed or included therein or thereon by the manufacturer.

(2) That the manufacturer shall take appropriate corrective action at the site of the manufactured home in instances of substantial defects in materials or workmanship which become evident within one (1) year from the date of delivery of the manufactured home to the buyer, provided the buyer gives written notice of such defects to the manufacturer or dealer at their business address not later than one (1) year and ten (10) days after date of delivery.

The warranty provided herein shall be in addition to and not in derogation of any other right or privilege which the buyer may have as otherwise provided by law or instrument. The manufacturer shall not require the buyer to waive his rights under this section and any waiver shall be deemed contrary to public policy and shall be void and unenforceable. Any action instituted by a buyer for failure of the manufacturer to comply with the provisions of this act shall be considered as an action within the provisions of section 12-120, Idaho Code, providing for recovery of attorney fees.

**History.**

I.C., § 39-4010, as added by S.L. 1972, ch.

173, § 1, p. 433; am. 1988, ch. 264, § 11, p. 519; am. 1995, ch. 267, § 8, p. 856.

**STATUTORY NOTES**

**Compiler's Notes.**

The terms "this act" in the last paragraph

refers to S.L. 1972, ch. 173, which is codified as this section only.

**39-4011. Violations.** — (1) Any person who violates any of the following provisions relating to manufactured homes, or any rule promulgated by the administrator of the division of building safety to administer the provisions of this chapter shall be liable for a civil penalty of not to exceed one thousand dollars (\$1,000) for each such violation. Each such violation shall constitute a separate violation with respect to each manufactured home, except that the maximum penalty shall not exceed one million dollars (\$1,000,000) for any related series of violations occurring within one (1) year from the date of the first violation. Violations include:

- (a) Manufacturing for sale, leasing, selling, offering for sale, or introducing or delivering or importing, in the state of Idaho, any manufactured home which is manufactured on or after the effective date of any applicable federal manufactured home construction and safety standard which does not comply with such standard;
- (b) Failure or refusal to permit entry or inspection as required by section 39-4003A, Idaho Code;
- (c) Failure of manufacturer to give notification of any defects in any manufactured home, in the manner required by 42 USC 5414;
- (d) Failure to furnish to distributor or dealer at the time of delivery of each manufactured home produced by such manufacturer, certification that said manufactured home conforms to all applicable federal construction and safety standards or issuance of a certification to the effect that a manufactured home conforms to all applicable federal manufactured home construction and safety standards, if such person in the exercise of



due care has reason to know that such certification is false or misleading in a material respect;

(e) Failure of any manufacturer, distributor or dealer of manufactured homes to establish and maintain such records, make such reports, and provide such information as the administrator of the division of building safety may reasonably require to enable him to determine whether such manufacturer, distributor or dealer has acted or is acting in compliance with this chapter and with federal manufactured home construction and safety standards; or failure to permit, upon request of a person duly designated by the administrator, inspection of appropriate books, papers, records and documents relative to determining whether such manufacturer, distributor or dealer has acted or is acting in compliance with federal manufactured home construction or safety standards.

(2) Any person or officer, director or agent of a corporation who wilfully or knowingly violates the provisions enumerated in subsection 1(a) through (e) of this section, in any manner which threatens the health or safety of any purchaser shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than one (1) year, or both.

(3) Violations of this chapter shall be tried in any court of competent jurisdiction within the state of Idaho.

**History.**  
I.C., § 39-4011, as added by 1978, ch. 118, § 2, p. 269; am. 1980, ch. 108, § 3, p. 245; am.

1988, ch. 264, § 12, p. 519; am. 1996, ch. 421, § 25, p. 1406.

STATUTORY NOTES

**Cross References.**  
Administrator of the division of building safety, § 54-2607.

that the act should take effect on and after January 1, 1989.

**Effective Dates.**  
Section 30 of S.L. 1988, ch. 264 provided

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IDAHO BUILDING CODE ACT

SECTION.	SECTION.
39-4101. Legislative finding and intent.	39-4113. Plan reviews — Maximum fees and school inspections.
39-4102. Short title.	39-4114. Fees. [Repealed.]
39-4103. Scope — Exemptions.	39-4115. Personnel.
39-4104. Enforcement of law.	39-4116. Local government adoption and enforcement of building codes.
39-4105. Definitions.	39-4116A, 39-4117. [Repealed.]
39-4106. Idaho building code board created — Membership — Appointment — Terms — Quorum — Compensation — Meetings.	39-4118, 39-4119. [Repealed.]
39-4107. Powers and duties.	39-4120. Appeals to board — Judicial review.
39-4108. Certification.	39-4121. Modular buildings — Insignia of approval — Installation — Modification. [Repealed.]
39-4109. Application of codes.	39-4122. Commercial coaches — Issuance of insignia — Cost. [Repealed.]
39-4110. Proposal and adoption of new standards — Coaches — Foamed plastics. [Repealed.]	39-4123. Zoning and site development. [Repealed.]
39-4111. Permits required.	39-4124. "Idaho building code fund" established.
39-4112. Maximum permit fees to be assessed by the division.	

## SECTION.

- 39-4125. Injunction — Affidavit setting out nonconformity.  
 39-4126. Violations misdemeanors.  
 39-4127. Civil action. [Repealed.]

## SECTION.

- 39-4128. Reciprocity of standards with other states. [Repealed.]  
 39-4129. Severability.  
 39-4130, 39-4131. [Repealed.]

**39-4101. Legislative finding and intent.** — (1) Uniformity of building codes and uniformity in procedures for enforcing building safety codes throughout the state are matters of statewide concern and interest, in that uniformity would enhance elimination of obsolete, restricting, conflicting, duplicating and unnecessary regulations and requirements which could unnecessarily increase construction costs or retard the use of new materials and methods of installation or provide unwarranted preferential treatment to types or classes of materials or products or methods of construction.

(2) It is the intent of the legislature to:

- (a) Promote the health, safety and welfare of the occupants or users of buildings and structures subject to this chapter;
- (b) Require minimum performance standards and requirements for construction and construction materials, consistent with accepted standards of engineering, fire safety, life safety and accessibility for those with disabilities;
- (c) Establish, for jurisdictions enforcing building codes pursuant to this chapter, minimum standards and requirements in terms of performance, energy efficiency, effect upon construction costs and consistency with nationally accepted standards;
- (d) Permit the use of modern technical methods, devices and improvements; and
- (e) Clarify and establish roles of the various jurisdictions subject to this chapter.

**History.**

I.C., § 39-4101, as added by 1975, ch. 180, § 2, p. 486; am. 1983, ch. 153, § 1, p. 407; am.

2000, ch. 465, § 1, p. 1439; am. 2002, ch. 345, § 3, p. 963.

**STATUTORY NOTES****Prior Laws.**

Former §§ 39-4101 to 39-4109, which comprised S.L. 1972, ch. 146, §§ 1 to 9, p. 316;

1972, ch. 384, § 1, p. 1116; 1974, ch. 39, §§ 57 to 59, p. 1023, were repealed by S.L. 1975, ch. 180, § 1.

**JUDICIAL DECISIONS**

**Cited in:** *Jerome Thriftway Drug, Inc. v. Winslow*, 110 Idaho 615, 717 P.2d 1033 (1986);

*State v. Gage*, 123 Idaho 875, 853 P.2d 620 (Ct. App. 1993).

**OPINIONS OF ATTORNEY GENERAL**

In light of the promulgation of uniform building and safety codes by the legislature, the authority granted to the department of administration and the department of labor and industrial services, and the directive by

the governor that such codes will apply to state projects, the state's authority over its projects is complete. There is simply no basis for local infringement by a municipality. OAG 90-6.

**39-4102. Short title.** — This chapter shall be known as “The Idaho Building Code Act.”

**History.**

I.C., § 39-4102, as added by 1975, ch. 180,  
§ 2, p. 486; am. 2002, ch. 345, § 4, p. 963.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-4102 was repealed. See Prior  
Laws, § 39-4101.

**39-4103. Scope — Exemptions.** — (1) This chapter authorizes the state division of building safety and local governments to adopt and enforce building codes pursuant to the provisions of this chapter.

(2) All buildings and other facilities owned by any state government agency or entity, including those owned, constructed or financed by the Idaho state building authority, shall conform to the codes adopted in this chapter, chapter 2, title 41, Idaho Code, chapter 10, title 54, Idaho Code, chapter 26, title 54, Idaho Code, and chapter 50, title 54, Idaho Code, and shall be subject to the jurisdiction of the state division of building safety and the state fire marshal for purposes of all plan reviews, permitting and inspections. In performing such plan reviews, permitting and inspections, the division of building safety and the state fire marshal shall route building plans to affected local government agencies, and shall take into consideration local government comments and ordinances and shall promptly notify the local jurisdictions of actions taken and the reasons therefor, and transmit to the local jurisdictions copies of final building plans.

(3) All buildings and other facilities owned by anyone other than state government agencies or entities which are constructed or renovated specifically for use or occupancy by any state agency or entity shall conform to all state adopted codes and standards. Nothing in this subsection shall limit the authority of local governments to issue permits, review plans and provide a full range of building code enforcement activities for such buildings.

(4) The following are exempt from the provisions of this chapter:

(a) Equipment used primarily for industrial chemical process purposes and for mineral extraction and mineral processing purposes. This exemption shall not include the erection and fabrication of new boilers, pressure vessels and other equipment as required to condition the building for personnel comfort and safety. Equipment in this regard shall mean and shall be limited to facilities or installations for heating, ventilating, air conditioning, refrigerating equipment, elevators, dumbwaiters, escalators, and boilers and pressure vessels associated with building heating systems.

(b) Modular buildings as defined in section 39-4301, Idaho Code, that are constructed in the state of Idaho for installation on building sites outside the state; provided however, that no modular building shall be installed on a building site in the state of Idaho until it has been approved and bears the insignia of approval of the division as being in compliance with the requirements set forth in chapter 43, title 39, Idaho Code.



**History.**

I.C., § 39-4103, as added by 1975, ch. 180, § 2, p. 486; am. 1988, ch. 264, § 13, p. 519; am. 2002, ch. 345, § 5, p. 963; am. 2003, ch.

256, § 1, p. 663; am. 2004, ch. 250, § 1, p. 715; am. 2004, ch. 272, § 1, p. 757; am. 2007, ch. 252, § 1, p. 737.

**STATUTORY NOTES****Cross References.**

Division of building safety, § 67-2601A.  
State building authority, § 67-6401 et seq.  
State fire marshal, §§ 41-254, 41-255.

**Prior Laws.**

Former § 39-4103 was repealed. See Prior Laws, § 39-4101.

**Amendments.**

This section was amended by two 2004 acts which appear to be compatible and have been compiled together.

The 2004 amendment, by ch. 250, divided the provisions of subsection (4) into the present introductory paragraph and paragraph (a) and added paragraph (b).

The 2004 amendment, by ch. 272, added a reference to Chapter 50, Title 54 and ar-

ranged the citations in the first sentence in subsection (2) in numerical order.

The 2007 amendment, by ch. 252, in subsection (4)(b), substituted "section 39-4301" for "subsection (12) of section 39-4105" and "chapter 43, title 39, Idaho Code" for "section 39-4121, Idaho Code."

**Effective Dates.**

Section 2 of S.L. 2003, ch. 256 declared an emergency retroactively to January 1, 2003 and approved April 8, 2003.

Section 10 of S.L. 2004, ch. 250 declared an emergency. Approved March 23, 2004.

Section 6 of S.L. 2004, ch. 272 declared an emergency. Approved March 23, 2004.

**39-4104. Enforcement of law.** — The administrator of the division of building safety shall enforce the provisions of this chapter that apply to the state. Local governments that adopt building codes shall enforce all of the provisions of this chapter that govern application by local governments.

**History.**

I.C., § 39-4104, as added by 1975, ch. 180, § 2, p. 486; am. 1996, ch. 421, § 26, p. 1406;

am. 2002, ch. 345, § 6, p. 963; am. 2004, ch. 272, § 2, p. 757.

**STATUTORY NOTES****Cross References.**

Administrator of the division of building safety, § 54-2607.

**Prior Laws.**

Former § 39-4104 was repealed. See Prior Laws, § 39-4101.

**Effective Dates.**

Section 6 of S.L. 2004, ch. 272 declared an emergency. Approved March 23, 2004.

**39-4105. Definitions.** — As used in this chapter, the terms defined in this section shall have the following meanings, unless the context clearly indicates another meaning. Where terms are not defined in this chapter and are defined in the currently adopted International Building Code published by the International Code Council, such terms shall have the meanings ascribed to them in that code:

(1) "Administrator" means the administrator of the division of building safety for the state of Idaho.

(2) "Board" means the Idaho building code board, herein created.

(3) "Building inspector" means a person who inspects buildings or structures for compliance with the provisions of this chapter.

(4) "Construction" means the erection, fabrication, reconstruction, demolition, alteration, conversion, or repair of a building, or the installation of equipment therein normally a part of the structure.

(5) "Division" means the state of Idaho division of building safety.

(6) "International Fire Code" means the International Fire Code as published by the International Code Council.

(7) "Local government" means any city or county of this state.

(8) "Manufactured home" means a structure, constructed after June 15, 1976, in accordance with the HUD manufactured home construction and safety standards, and is transportable in one (1) or more sections, which, in the traveling mode, is eight (8) body feet or more in width or is forty (40) body feet or more in length, or when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein, except that such term shall include any structure which meets all the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of housing and urban development and complies with the standards established under 42 U.S.C. section 5401 et seq.

(9) "Mobile home" means a factory-assembled structure or structures generally constructed prior to June 15, 1976, and equipped with the necessary service connections and made so as to be readily movable as a unit or units on their own running gear and designed to be used as a dwelling unit or units with or without a permanent foundation.

(10) "Telecommunications facilities" means all wires, cables, equipment, apparatus or other installations necessary to furnish service, by which there is accomplished or may be accomplished, the sending or receiving of information, data, message writing signs, signals, pictures, and sounds of all kinds, by aid of such wires, cables, equipment, apparatus or other installations, but shall not include the habitable structure in which such telecommunications facilities are housed.

#### **History.**

I.C., § 39-4105, as added by 1975, ch. 180, § 2, p. 486; am. 1976, ch. 129, § 1, p. 488; am. 1983, ch. 153, § 2, p. 407; am. 1986, ch. 30, § 1, p. 84; am. 1992, ch. 197, § 1, p. 609; am.

1995, ch. 267, § 9, p. 856; am. 1996, ch. 421, § 27, p. 1406; am. 2002, ch. 345, § 7, p. 963; am. 2004, ch. 250, § 2, p. 715; am. 2007, ch. 252, § 2, p. 737.

### **STATUTORY NOTES**

#### **Cross References.**

Administrator of the division of building safety, § 54-2607.

Division of building safety, § 67-2601A.

Idaho building code board, § 39-4106 et seq.

#### **Prior Laws.**

Former § 39-4105 was repealed. See Prior Laws, § 39-4101.

#### **Amendments.**

The 2007 amendment, by ch. 252, deleted former subsections (4), (5), and (12), which were the definitions for "Closed construction,"

"Commercial coach," and "Modular building," respectively, and redesignated the remaining subsections accordingly.

#### **Compiler's Notes.**

The International Building Code and the International Fire Code are promulgated by the International Code Council, which is dedicated to building safety and fire prevention. See <http://www.iccsafe.org>.

#### **Effective Dates.**

Section 10 of S.L. 2004, ch. 250 declared an emergency. Approved March 23, 2004.

**JUDICIAL DECISIONS**

**Cited in:** In re Peters, 168 Bankr. 710 (Bankr. D. Idaho 1994); Le'Gall v. Lewis County, 129 Idaho 182, 923 P.2d 427 (1996).

**39-4106. Idaho building code board created — Membership — Appointment — Terms — Quorum — Compensation — Meetings. —**

(1) The Idaho building code board is established within the division as an appeals, code adoption and rulemaking board, to be appointed by the governor, and shall consist of ten (10) members: one (1) member of the general public; one (1) local fire official; one (1) licensed engineer; one (1) licensed architect; two (2) local building officials, one (1) from a county and one (1) from a city; two (2) building contractors, one (1) residential contractor who is an active member of the Idaho building contractors association with construction knowledge based primarily on a work history of buildings regulated by the International Residential Code, and one (1) commercial contractor who is an active member of either the associated builders and contractors or the associated general contractors of America with construction knowledge based primarily on a work history of buildings regulated by the International Building Code; one (1) representative of the modular building industry; and one (1) individual with a disability from an organization that represents people with all types of disabilities. Board members shall be appointed for terms of four (4) years and until their successor has been appointed. Three (3) consecutive failures by a member to attend meetings of the board without reasonable cause shall constitute cause for removal of the member from the board by the governor. Whenever a vacancy occurs, the governor shall appoint a qualified person to fill the vacancy for the unexpired portion of the term.

(2) The members of the board shall, at their first regular meeting following the effective date of this chapter and every two (2) years thereafter, elect by majority vote of the members of the board, a chairman who shall preside at meetings of the board. A majority of the currently appointed members of the board shall constitute a quorum.

(3) Each member of the board not otherwise compensated by public moneys shall be compensated as provided by section 59-509(h), Idaho Code, for each day spent in attendance at meetings of the board.

(4) The board shall meet for regular business sessions at the call of the administrator, chairman, or at the request of four (4) members of the board, provided that the board shall meet at least biannually.

**History.**

I.C., § 39-4106, as added by S.L. 1975, ch. 180, § 2, p. 486; am. 1980, ch. 247, § 39, p. 582; am. 1983, ch. 153, § 3, p. 407; am. 1986, ch. 304, § 1, p. 755; am. 1988, ch. 264, § 14, p.

519; am. 1995, ch. 267, § 10, p. 856; am. 2000, ch. 465, § 2, p. 1439; am. 2001, ch. 151, § 1, p. 546; am. 2002, ch. 345, § 8, p. 963; am. 2009, ch. 173, § 1, p. 551.



## STATUTORY NOTES

**Prior Laws.**

Former § 39-4106 was repealed. See Prior Laws, § 39-4101.

**Amendments.**

The 2009 amendment, by ch. 173, rewrote subsection (1), correcting terminology and revising membership of the Idaho building code board.

**Compiler's Notes.**

The Idaho building contractors association is a trade association representing the home building industry. See <http://libca.org>.

The International Residential Code is promulgated by the International Code Council, which is dedicated to building safety and fire prevention. See <http://www.iccsafe.org>.

The associated builders and contractors is a national association representing thousands of merit shop construction and construction-related firms. See <http://www.abc.org>.

The associated general contractors of America represents general contractors, specialty contractors, service providers, and suppliers. See <http://www.agc.org>.

The phrase "effective date of this chapter" in subsection (2) refers to the effective date of S.L. 1975, ch. 180, which was July 1, 1975.

**Effective Dates.**

Section 4 of S.L. 2009, ch. 173 declared an emergency. Approved April 17, 2009.

**39-4107. Powers and duties.** — (1) The board shall continually study the operation of adopted codes, standards and rules relating to the construction of buildings or facilities under the jurisdiction of the division to ascertain their effect upon the public safety and shall support an ongoing effort to promote the uniform adoption, application and interpretation of safety, accessibility and building codes statewide. The board shall have the authority to adopt and enforce the codes specified in section 39-4109, Idaho Code, or later editions of such codes, and to promulgate rules in accordance with chapter 52, title 67, Idaho Code, to implement the provisions of this chapter.

(2) The board shall function as a board of appeals for the division as prescribed in the adopted building code. The board shall have no authority to waive any requirements of the codes enumerated in this chapter or in rules promulgated pursuant to this chapter. Provided further:

(a) The decisions of the board shall be final, and the board shall render all decisions and findings in writing to the appellant and the administrator within ten (10) working days of the conclusion of a hearing; and

(b) For each appeal brought before the board, the chairman shall appoint not less than three (3) members of the board to hear the appeal and render a decision and finding in the name of the board.

(3) The board shall utilize experts, consultants, and technical advisors for assistance and recommendations relative to codes, standards, and appeals.

(4) The administrator may make building code inspections for another state or local jurisdiction upon request by an appropriate building official. Such inspections shall be made in accordance with the applicable building codes of the requesting jurisdiction. Fees charged for such inspection services shall be as provided in rules promulgated by the board pursuant to chapter 52, title 67, Idaho Code.

(5) Notwithstanding the exemptions provided in subsection (4)(b) of section 39-4103, Idaho Code, the administrator may make inspections of modular buildings constructed in Idaho upon written request from the manufacturer.

(a) Such inspections shall be made in accordance with the codes adopted in this chapter.

(b) Inspection fees shall be as provided in section 39-4303, Idaho Code.

(c) The administrator of the division of building safety may issue an insignia of approval if the buildings are in compliance with the requirements set forth in chapter 43, title 39, Idaho Code.

**History.**

I.C., § 39-4107, as added by 1975, ch. 180, § 2, p. 486; am. 1983, ch. 153, § 4, p. 407; am.

2000, ch. 465, § 3, p. 1439; am. 2002, ch. 345, § 9, p. 963; am. 2004, ch. 250, § 3, p. 715; am. 2007, ch. 252, § 3, p. 737.

**STATUTORY NOTES**

**Cross References.**

Administrators of the division of building safety, § 54-2607.

**Prior Laws.**

Former § 39-4107 was repealed. See Prior Laws, § 39-4101.

**Amendments.**

The 2007 amendment, by ch. 252, in sub-

section (5)(b), substituted “provided in section 39-4303, Idaho Code” for “promulgated in board rule and shall be paid prior to the inspection”; and in subsection (5)(c), substituted “chapter 43, title 39” for “section 39-4121.”

**Effective Dates.**

Section 10 of S.L. 2004, ch. 250 declared an emergency. Approved March 23, 2004.

**39-4108. Certification.** — After July 1, 2002, state and local government building inspectors, including state safety advisors, shall hold a valid certification as a building inspector or plans examiner issued by the International Code Council (ICC) or the International Conference of Building Officials (ICBO), except that a building inspector with a valid ICC or ICBO residential building inspector certification may only inspect structures regulated by the International Residential Code (IRC). A building inspector with a valid ICC or ICBO residential building inspector certification working under the supervision of an ICC or ICBO certified building inspector or plans examiner may inspect all occupancy classifications for a period not to exceed three (3) years. Any building inspector or plans examiner possessing state certification as of June 30, 2002, may continue to serve as a building inspector, without renewal, until July 1, 2005, at which time certification as an ICC or ICBO building inspector or plans examiner shall be necessary to retain inspection authority.

**History.**

I.C., § 39-4108, as added by 2002, ch. 345, § 11, p. 963.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-4108 was repealed. See Prior Laws, § 39-4101.

**Compiler's Notes.**

The International Residential Code is promulgated by the International Code Council, which is dedicated to building safety and fire

prevention. See <http://www.iccsafe.org>. The International Conference of Building Officials (ICBO) merged the several other organizations in 1994 to found the International Code Council.

The letters enclosed in parentheses so appeared in the law as enacted.

**39-4109. Application of codes.** — (1) The following codes are hereby adopted for the state of Idaho division of building safety and shall only be applied by local governments as prescribed by section 39-4116, Idaho Code:



(a) The 2006 International Building Code shall be in effect, until such time as a subsequent version is adopted by the Idaho building code board, at which time the subsequent versions of the International Building Code as adopted and amended by the Idaho building code board through the negotiated rulemaking process as established in section 67-5221, Idaho Code, and as further provided in subsection (5) of this section and in accordance with subsections (2) and (3) herein shall be in effect:

- (i) Including appendices thereto pertaining to building accessibility;
- (ii) Excluding the incorporated electrical codes, mechanical code, fuel gas code, plumbing codes, fire codes or property maintenance codes other than specifically referenced subjects or sections of the International Fire Code; and
- (iii) Including the incorporated International Residential Code, parts I, II, III, IV and IX; International Energy Conservation Code; and rules promulgated by the board to provide equivalency with the provisions of the Americans with disabilities act accessibility guidelines and the fair housing act accessibility guidelines shall be included.

(b) The 2006 International Residential Code as published by the International Code Council, except for parts V, VI, VII and VIII as they pertain to mechanical, fuel gas, plumbing and electrical requirements shall be in effect, until such time as a subsequent version is adopted by the Idaho building code board, at which time the subsequent versions of the International Residential Code as adopted and amended by the Idaho building code board through the negotiated rulemaking process provided in this section shall be in effect;

(c) The 2006 International Energy Conservation Code as published by the International Code Council shall be in effect, until such time as a subsequent version is adopted by the Idaho building code board, at which time the subsequent versions of the International Energy Conservation Code as adopted and amended by the Idaho building code board through the negotiated rulemaking process provided in this section shall be in effect; and

(d) The 2006 International Existing Building Code as published by the International Code Council shall be in effect, until such time as a subsequent version is adopted by the Idaho building code board, at which time the subsequent versions of the International Existing Building Code as adopted and amended by the Idaho building code board through the negotiated rulemaking process provided in this section shall be in effect.

(2) No amendments to the accessibility guidelines shall be made by the Idaho building code board that provide for lower standards of accessibility than those published by the International Code Council.

(3) No amendments to the International Residential Building Code shall be made by the Idaho building code board that provide for standards that are more restrictive than those published by the International Code Council.

(4) Any edition of the building codes adopted by the board will take effect on January 1 of the year following its adoption.

(5) In addition to the negotiated rulemaking process set forth in section 67-5221, Idaho Code, the board shall conduct a minimum of two (2) public hearings, not less than sixty (60) days apart. Express written notice of such



public hearings shall be given by the board to each of the following entities not less than five (5) days prior to such hearing: associated general contractors of America, associated builders and contractors, association of Idaho cities, Idaho association of building officials, Idaho association of counties, Idaho association of REALTORS®, Idaho building contractors association, American institute of architects Idaho chapter, Idaho fire chiefs association, Idaho society of professional engineers, Idaho state independent living council, southwest Idaho building trades, Idaho building trades, and any other entity that, through electronic or written communication received by the administrator not less than twenty (20) days prior to such scheduled meeting, requests written notification of such public hearings.

#### History.

I.C., § 39-4109, as added by 2002, ch. 345, § 13, p. 963; am. 2004, ch. 272, § 3, p. 757; am. 2004, ch. 359, § 2, p. 1067; am. 2007, ch.

184, § 1, p. 532; am. 2009, ch. 173, § 2, p. 551; am. 2009, ch. 279, § 1, p. 841; am. 2010, ch. 79, § 14, p. 133.

### STATUTORY NOTES

#### Cross References.

Division of building safety, § 67-2601A.

Idaho building code board, § 39-4106 et seq.

#### Prior Laws.

Former § 39-4109, as added by 1975, ch. 180, § 2, was repealed by S.L. 2002, ch. 345, § 11.

Another former § 39-4109 was repealed. See Prior Laws, § 39-4101.

#### Amendments.

This section was amended by two 2004 acts which appear to be compatible and have been compiled together.

The 2004 amendment, by ch. 272, rewrote subsections (1) to (3), deleted former subsections (4) to (6), relating to the Uniform Mechanical Code, the Uniform Code for Building Conservation, and the Safety Code for Elevators and Escalators, and added present subsection (4).

The 2004 amendment, by ch. 359, also deleted former subsection (6), relating to the Safety Code for Elevators and Escalators.

The 2007 amendment, by ch. 184, substituted "January 1, 2008" for "January 1, 2005" in the introductory paragraph; and in subsection (3), substituted "2006" for "2003," and deleted "except that in chapter 7, the reference to the ASHRAE/IESNA 90.1 standard shall be the 2001 edition of such standard, including addendum G."

This section was amended by two 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 173, rewrote the section to the extent that a detailed comparison is impracticable.

The 2009 amendment, by ch. 279, deleted subsection (1)(d), which read: "Replacing sec-

tion 903.2.7 of the 2003 International Building Code with sections 903.2.7, 903.2.8 and 903.2.9 of the 2000 International Building Code, which pertain to fire sprinklers in group R occupancies."

The 2010 amendment, by ch. 79, deleted "(iv)6" at the end of paragraph (1)(a)(iii).

#### Federal References.

The Americans with disabilities act, referred to in subdivision (1)(a)(iii), is codified as 42 USCS § 12101 et seq.

The fair housing act, referred to in subdivision (1)(a)(iii), is codified as 42 USCS § 3601 et seq.

#### Compiler's Notes.

The international codes cited in this section are promulgated by the International Code Council, which is dedicated to building safety and fire prevention. See <http://www.iccsafe.org>.

Websites for organizations referenced in subsection (5):

associated general contractors of America

— <http://www.agc.org/>

associated builders and contractors —

<http://www.abc.org/>

association of Idaho cities — <http://www.idahocities.org/>

Idaho association of building officials —

<http://www.idabo.org/>

Idaho association of counties — <http://www.idcounties.org/>

Idaho association of REALTORS® —

<http://www.idahorealtors.com/>

Idaho building contractors association —

<http://libca.org/>

American institute of architects Idaho

chapter — <http://www.aiaidaho.com/>

Idaho fire chiefs association — <http://idahofirechiefs.org/>

Idaho society of professional engineers —  
<http://www.idahospes.org/>  
 Idaho state independent living council —  
<http://www.silc.idaho.gov/>  
 southwest Idaho building trades — <http://www.bcaswi.org/>

**Effective Dates.**

Section 6 of S.L. 2004, ch. 272 declared an emergency. Approved March 23, 2004.

Section 4 of S.L. 2009, ch. 173 declared an emergency. Approved April 17, 2009.

**JUDICIAL DECISIONS****Life Safety Code.**

Trial court correctly refused to give jury instruction on life safety code (LSC) in a negligence action for injuries suffered while escaping from an apartment fire where plaintiffs did not introduce any evidence that either the county or city had adopted the LSC.

Le'Gall v. Lewis County, 129 Idaho 182, 923 P.2d 427 (1996).

**Cited in:** Runcorn v. Shearer Lumber Prods., Inc., 107 Idaho 389, 690 P.2d 324 (1984).

### **39-4110. Proposal and adoption of new standards — Coaches — Foamed plastics. [Repealed.]**

**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised I.C., § 39-4110, as added by 1975, ch. 180, § 2, p. 486;

am. 1983, ch. 153, § 7, p. 407, was repealed by S.L. 2002, ch. 345, § 14.

**39-4111. Permits required.** — (1) It shall be unlawful for any person to do, or cause or permit to be done, whether acting as principal, agent or employee, any construction, improvement, extension or alteration of any building, residence or structure, coming under the purview of the division, in the state of Idaho without first procuring a permit from the division authorizing such work to be done.

(2) It shall be unlawful for any person to do, or cause or permit to be done, whether acting as principal, agent or employee, any construction, improvement, extension or alteration of any building, residence or structure in a local government jurisdiction enforcing building codes, without first procuring a permit in accordance with the applicable ordinance or ordinances of the local government.

(3) Subject to building code requirements governing accessibility, no permit shall require that any improvement, extension or alteration of any building, residence or structure include an upgrade to comply with building code requirements in unaffected existing parts of the building, residence or structure where the existing parts complied with the applicable building code in effect when such parts were constructed. This limitation shall not apply where the division or enforcing jurisdiction identifies a specific substantial safety hazard that would be created in the existing building, residence or structure by reason of the new improvement, extension or alteration, provided that any additional permitting requirement shall be limited to correcting the specific substantial safety hazard. The burden shall be upon the division or enforcing jurisdiction to prove the existence of such specific substantial safety hazard. The permit shall identify the specific hazard and the basis for determining that it is a substantial hazard.



**History.**

I.C., § 39-4111, as added by 1975, ch. 180, § 2, p. 486; am. 1978, ch. 160, § 1, p. 348; am. 1983, ch. 153, § 8, p. 407; am. 1988, ch. 264,

§ 16, p. 519; am. 1995, ch. 267, § 12, p. 856; am. 2002, ch. 345, § 15, p. 963; am. 2011, ch. 228, § 1, p. 622.

**STATUTORY NOTES****Amendments.**

The 2011 amendment, by ch. 228, added subsection (3).

**39-4112. Maximum permit fees to be assessed by the division. —** Building permit fees shall be as established by rules promulgated by the board. Until such rules are effective, building permit fees based on total value of the construction shall not exceed those given in table 3-A, Uniform Building Code, 1985.

**History.**

I.C., § 39-4112, as added by 1975, ch. 180, § 2, p. 486; am. 1983, ch. 153, § 9, p. 407; am.

1990, ch. 155, § 1, p. 341; am. 2002, ch. 345, § 16, p. 963.

**39-4113. Plan reviews — Maximum fees and school inspections.**

— (1) The administrator shall establish a program for plan reviews and permit issuance entirely within the division of building safety. Plan reviews shall be for the provisions of this chapter and chapter 10, title 54, Idaho Code, chapter 26, title 54, Idaho Code, chapter 50, title 54, Idaho Code, and chapter 86, title 39, Idaho Code, pertaining to construction, alteration or repair of buildings or structures within the scope of the division's jurisdiction pursuant to this chapter. Plans for schools reviewed by the division shall not include a review for compliance with the provisions of chapter 2, title 41, Idaho Code, or for local planning and zoning requirements.

(2) Plan review fees shall be established by rules promulgated by the board. Local governments elected by school districts to perform building plan reviews for public schools as provided for in this section shall not charge a fee for such review of building plans in excess of what the division has established by rule for building plan review services for public schools.

(3) Each manufacturer of commercial coaches and modular buildings shall submit the building plans for every model of such structure to the administrator for the purpose of review.

(4)(a) Public school building plans shall be approved by either the local government or the division of building safety, whichever the school district elects. Any city or county that has adopted by ordinance all the applicable codes pursuant to section 39-4109, Idaho Code, and the codes as permitted in chapter 10, title 54, Idaho Code, chapter 26, title 54, Idaho Code, and chapter 50, title 54, Idaho Code, shall be eligible to perform school plan reviews only if the following additional requirements are met: plans examiners performing building and energy code plan reviews shall hold current certification as a commercial building plans examiner by the International Code Council; examiners performing plumbing code plan reviews shall hold current certification as a plumbing inspector by the international association of plumbing and mechanical officials and shall be a licensed Idaho journeyman plumber; examiners performing electrical



code plan reviews shall hold current certification as an electrical inspector by the national certification program for construction code inspectors and shall be a licensed Idaho journeyman electrician; and examiners performing mechanical code plan reviews shall hold current certification as a commercial mechanical inspector by the International Code Council.

(b) All plans examiners who perform public school plan reviews shall be either an employee of the division, an employee of the local jurisdiction in which the school is to be constructed, or performing plan reviews under an interagency contract between local jurisdictions, and shall meet the eligibility requirements as provided in subsection (4)(a) of this section.

(c) An eligible local government may contract with the division for review of any portion of the plans for which the local government does not have a properly certified plans examiner. A county may be deemed eligible to perform plan review services only for those types of installations for which they have authority pursuant to this chapter and chapter 50, title 54, Idaho Code, to adopt an enforcement program. Where an eligible county performs the plan review services, the electrical and plumbing code plan reviews shall be performed by the division at the hourly rate as established in rule by the division. Any local government elected to perform plan review services for public schools shall provide the division a copy of all approved plans.

(d) Wherein the proposed work is valued in excess of one hundred thousand dollars (\$100,000), a school district may elect to utilize the school plan review services available from an eligible local government building code enforcement jurisdiction or from the division. Wherein the proposed work is valued at one hundred thousand dollars (\$100,000) or less, a school district may elect to use a local government without regard to the eligibility requirements in subsection (4)(a) of this section. Election by a school district shall be made by submitting a written certification to both the division and the involved local government.

(e) Public school plan review services provided by either the division or an eligible local jurisdiction pursuant to this section shall include a review of the following disciplines: building (structural and nonstructural), mechanical, fuel gas, plumbing, electrical, accessibility, elevators, boilers, and energy conservation. At a minimum, plan review services shall include:

(i) A technical examination of all drawings and construction documents; and

(ii) The approval of such drawings and construction documents by determining whether such are in accord with the codes adopted pursuant to sections 39-4109, 54-1001, 54-2601 and 54-5001, Idaho Code, as well as in compliance with applicable provisions of section 72-722, Idaho Code; and

(iii) A determination that the drawings and construction documents are in compliance, or noncompliance, with the applicable codes, code interpretation, and the identification of approved modifications or alternative materials, design or methods; and

(iv) The identification of the reviewing official(s), the date upon which plans are approved, as well as a stamp or some other similar mark on the plans evidencing approval.

(f) If a school district elects to utilize the plan review services of the division, it shall submit to the division of building safety three (3) sets of working drawings and specifications for new public school buildings or facilities and additions or alterations to existing facilities. The division will review the plans submitted to it pursuant to this section for compliance with the current editions of the codes specified in this chapter or within rules promulgated pursuant to this chapter by the board and by section 39-8006, Idaho Code.

(5) Public school building plans must be approved by either the local government or the division before the school district may advertise for bids. Once plans are reviewed and approved pursuant to this section, no material change can be made to such plans without review and approval of such change by the jurisdiction performing the plan review. All school construction or remodeling governed by this chapter shall be inspected by building inspectors certified in accordance with section 39-4108, Idaho Code, or by Idaho licensed architects or engineers to determine compliance with this chapter and the Idaho uniform school building safety act, chapter 80, title 39, Idaho Code. Nothing in this section shall limit the authority of local governments to issue building permits, perform fire code or other zoning and land use related plan reviews or provide a full range of building code enforcement activities as they relate to inspections of school buildings or facilities sited within their jurisdiction regardless of the election exercised by the school district pursuant to this section.

#### History.

I.C., § 39-4113, as added by 1975, ch. 180, § 2, p. 486; am. 1978, ch. 160, § 2, p. 348; am. 1983, ch. 153, § 10, p. 407; am. 1988, ch. 264, § 17, p. 519; am. 1990, ch. 155, § 2, p. 341;

am. 1990, ch. 167, § 1, p. 363; am. 1995, ch. 267, § 13, p. 856; am. 1996, ch. 2, § 1, p. 3; am. 2000, ch. 352, § 2, p. 1182; am. 2002, ch. 345, § 17, p. 963; am. 2009, ch. 219, § 1, p. 681; am. 2010, ch. 174, § 1, p. 357.

### STATUTORY NOTES

#### Cross References.

Division of building safety, § 67-2601A.

#### Amendments.

The 2009 amendment, by ch. 219, rewrote the section to the extent that a detailed comparison is impracticable.

The 2010 amendment, by ch. 174, rewrote paragraph (4)(b), which formerly read: "All plans examiners who perform plan reviews shall be full-time employees of the division or the eligible local government in whose jurisdiction the public school facility is to be constructed"; and added paragraph (4)(e), and redesignated former paragraph (4)(e) as paragraph (4)(f).

#### Compiler's Notes.

The International Code Council is dedicated to building safety and fire prevention. See <http://www.iccsafe.org>.

The international association of plumbing and mechanical officials serves the plumbing and mechanical industry by protecting health and safety, supporting emerging technology, and delivering code education. See <http://www.iapmo.org>.

The national certification program for construction code inspectors is administered by the international association of electrical inspectors. See <http://www.iaei.org/education/certncpcci.html>.

The words enclosed in parentheses so appeared in the law as enacted.



**39-4114. Fees. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised I.C., § 39-4114, as added by 1975, ch. 180, § 2, p. 486;

am. 1983, ch. 153, § 11, p. 407, was repealed by S.L. 2002, ch. 345, § 18.

**39-4115. Personnel.** — The division shall employ a bureau chief, who shall in addition to his other duties, function as the executive director of the board, and such other personnel as necessary to effect enforcement of the codes herein enumerated or otherwise prescribed by rules promulgated by the board pursuant to this chapter. All such employees, except the bureau chief, shall be classified as prescribed in chapter 53, title 67, Idaho Code.

**History.**

I.C., § 39-4115, as added by 1975, ch. 180, § 2, p. 486; am. 2002, ch. 345, § 19, p. 963.

**39-4116. Local government adoption and enforcement of building codes.** — (1) Local governments enforcing building codes shall do so only in compliance with the provisions of this section. Local governments that have not previously instituted and implemented a code enforcement program prior to the effective date of this act may elect to implement a building code enforcement program by passing an ordinance evidencing the intent to do so. Local governments may contract with a public or private entity to administer their building code enforcement program.

(2) Local governments that issue building permits and perform building code enforcement activities shall, by ordinance effective January 1 of the year following the adoption by the Idaho building code board, adopt the following codes as published by the International Code Council together with any amendments or revisions set forth in section 39-4109, Idaho Code, including subsequent versions of the International Building Code as adopted and amended by the Idaho building code board through the negotiated rulemaking process provided in this chapter:

- (a) International Building Code, including all rules promulgated by the board to provide equivalency with the provisions of the Americans with disabilities act accessibility guidelines and the federal fair housing act accessibility guidelines;
- (b) International Residential Code, parts I-IV and IX; and
- (c) International Energy Conservation Code.

Local governments are not required by this chapter to adopt the other referenced codes in the International Building Code.

(3) All single family homes and multiple family dwellings up to two (2) units are hereby exempted from the provisions of the International Fire Code, the International Building Code and the International Residential Code that require such dwellings to have automatic fire sprinkler systems installed. Nothing in this section shall prevent any person from voluntarily installing an automatic fire sprinkler system in any residential dwelling.

(4) Local governments may amend by ordinance the adopted codes or provisions of referenced codes to reflect local concerns, provided such



amendments establish at least an equivalent level of protection to that of the adopted building code. A local jurisdiction shall not have the authority to amend any accessibility provision pursuant to section 39-4109, Idaho Code, except as provided in paragraphs (a) and (b) of this subsection.

(a) A local jurisdiction shall not have the authority to amend any accessibility provision pursuant to section 39-4109, Idaho Code.

(b) A local jurisdiction shall not adopt any provision of the International Building Code or International Residential Code or appendices thereto, that has not been adopted or that has been expressly rejected or exempted from the adopted version of those codes by the Idaho building code board through the negotiated rulemaking process as provided in section 39-4109, Idaho Code. Provided however, that, after a finding by the local jurisdiction that good cause exists for such an amendment to such codes and that such amendment is reasonably necessary, a local jurisdiction may adopt such provision by ordinance in accordance with the provisions of chapter 9, title 50, Idaho Code, and provided further that such local jurisdiction shall conduct a public hearing and, provided further, that notice of the time and place of the public hearing shall be published in the official newspaper or paper of general circulation within the jurisdiction and written notice of each of such public hearing and the proposed language shall be given by the local jurisdiction to the local chapters of the entities identified in section 39-4109(5), Idaho Code, not less than thirty (30) days prior to such hearing. In the event that there are no local chapters of such entities identified in section 39-4109(5), Idaho Code, within the local jurisdiction holding the hearings, the notice shall be provided to the state associations of the respective entities.

(5) Local governments shall exempt agricultural buildings from the requirements of the codes enumerated in this chapter and the rules promulgated by the board. A county may issue permits for farm buildings to assure compliance with road setbacks and utility easements, provided that the cost for such permits shall not exceed the actual cost, to the county, of issuing the permits.

(6) Permits shall be governed by the laws in effect at the time the permit application is received.

(7) The division shall retain jurisdiction for in-plant inspections and installation standards for manufactured or mobile homes and for in-plant inspections and enforcement of construction standards for modular buildings and commercial coaches.

#### **History.**

I.C., § 39-4116, as added by 2002, ch. 345, § 21, p. 963; am. 2004, ch. 272, § 4, p. 757;

am. 2009, ch. 173, § 3, p. 551; am. 2009, ch. 219, § 2, p. 681; am. 2009, ch. 279, § 2, p. 841; am. 2010, ch. 79, § 15, p. 133.

#### **STATUTORY NOTES**

#### **Cross References.**

Idaho building code board, § 39-4106 et seq.

#### **Prior Laws.**

Former § 39-4116, which comprised I.C.,

§ 39-4116, as added by 1975, ch. 180, § 2, p. 486; am. 1977, ch. 159, § 1, p. 410; am. 1983, ch. 153, § 12, p. 407; am. 1988, ch. 264, § 18, p. 519; am. 1990, ch. 167, § 2, p. 363; am. 1992, ch. 89, § 2, p. 277; am. 1995, ch. 267, § 14, p. 856; am. 1996, ch. 2, § 2, p. 3; am.

2000, ch. 465, § 5, p. 1439, was repealed by S.L. 2002, ch. 345, § 20.

#### **Amendments.**

This section was amended by three 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 173, in the introductory paragraph in subsection (2), deleted “By January 1, 2005” from the beginning, inserted “effective January 1 of the year following the adoption by the Idaho building code board,” and added the language beginning “including subsequent versions”; added the exception in the last sentence in the introductory paragraph in subsection (3); and added subsections (3)(a) and (3)(b).

The 2009 amendment, by ch. 219, in the introductory paragraph in subsection (2), deleted “By January 1, 2005” from the beginning.

The 2009 amendment, by ch. 279, added subsection (3) and redesignated the subsequent subsections accordingly.

The 2010 amendment, by ch. 79, substituted “provided in paragraphs (a) and (b) of this subsection” for “provided in subsection (3)(a) and (b) of this section” in the introductory paragraph in subsection (4).

#### **Compiler’s Notes.**

The phrase “the effective date of this act” in subsection (1) refers to the effective date of S.L. 2002, ch. 345, which was July 1, 2002.

The international codes cited in this section are promulgated by the International Code Council, which is dedicated to building safety and fire prevention. See <http://www.iccsafe.org>.

#### **Effective Dates.**

Section 6 of S.L. 2004, ch. 272 declared an emergency. Approved March 23, 2004.

Section 4 of S.L. 2009, ch. 173 declared an emergency. Approved April 17, 2009.

### **JUDICIAL DECISIONS**

#### **Life Safety Code.**

Trial court correctly refused to give jury instruction on life safety code (LSC) in a negligence action for injuries suffered while escaping from an apartment fire where plain-

tiffs did not introduce any evidence that either the county or city had adopted the LSC. *Le’Gall v. Lewis County*, 129 Idaho 182, 923 P.2d 427 (1996).

### **39-4116A, 39-4117. Fire sprinkler systems — Notification for inspection — Time limit for inspection. [Repealed.]**

#### **STATUTORY NOTES**

#### **Compiler’s Notes.**

The following sections were repealed by S.L. 2002, ch. 345, § 22, effective July 1, 2002:

Section 39-4116A, as added by 1981, ch. 233, § 1, p. 472.

Section 39-4117, as added by 1975, ch. 180, § 2, p. 486.

### **39-4118, 39-4119. Fuel gas inspections — Local appeals boards. [Repealed.]**

#### **STATUTORY NOTES**

#### **Compiler’s Notes.**

These sections, which comprised I.C., §§ 39-4118 and 39-4119, as added by 1975,

ch. 180, § 2, p. 486, were repealed by S.L. 1983, ch. 153, § 13.

**39-4120. Appeals to board — Judicial review.** — The board shall, within twenty (20) days after receipt of notice for an appeal, hear such appeals brought before it by persons affected by any code, rule, regulation or decision applicable to buildings within the jurisdiction of the division. Such proceedings shall be governed by the provisions of chapter 52, title 67, Idaho Code. Final decisions of the board, other than code interpretations, are subject to judicial review in accordance with the provisions of chapter 52, title 67, Idaho Code.

**History.**

I.C., § 39-4120, as added by 1975, ch. 180, § 2, p. 486; am. 1983, ch. 153, § 14, p. 407;

am. 1993, ch. 216, § 26, p. 587; am. 2002, ch. 345, § 23, p. 963.

**39-4121. Modular buildings — Insignia of approval — Installation — Modification. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised I.C., § 39-4121, as added by 1975, ch. 180, § 2, p. 486;

am. 1988, ch. 264, § 19, p. 519; am. 2002, ch. 345, § 24, p. 963, was repealed by S.L. 2007, ch. 252, § 4.

**39-4122. Commercial coaches — Issuance of insignia — Cost. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised I.C., § 39-4122, as added by 1975, ch. 180, § 2, p. 486;

am. 2002, ch. 345, § 25, p. 963, was repealed by S.L. 2007, ch. 252, § 4.

**39-4123. Zoning and site development. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised I.C., § 39-

4123, as added by 1975, ch. 180, § 2, p. 486, was repealed by S.L. 1983, ch. 153, § 15.

**39-4124. "Idaho building code fund" established. —** All money received by the division under the terms and provisions of this chapter shall be paid into the state treasury, and shall be, by the state treasurer, placed to the credit of the general fund in an account to be known as the "Idaho building code fund," and all such moneys, hereafter placed in said fund, are hereby set aside and appropriated to the division to carry into effect the provisions of this chapter.

**History.**

I.C., § 39-4124, as added by 1975, ch. 180, § 2, p. 486; am. 2002, ch. 345, § 26, p. 963.

**OPINIONS OF ATTORNEY GENERAL**

The dedicated fund divisions of the department of labor and industrial services are required to go through the budgeting and

appropriation procedures of §§ 67-3501 — 67-3531 before expending the dedicated funds. OAG 85-7.

**39-4125. Injunction — Affidavit setting out nonconformity. —** The division may obtain from a district court having jurisdiction, a temporary injunction enjoining the construction of a building(s) or installation of modular buildings on any building site upon affidavit of the division that such building does not conform to the requirements of this chapter or to the rules adopted pursuant to this chapter or any other chapter of Idaho Code relating to building construction. The affidavit must set forth such viola-



tions in detail. The injunction may be made permanent, in the discretion of the court.

**History.**

I.C., § 39-4125, as added by S.L. 1975, ch. 180, § 2, p. 486; am. 1988, ch. 264, § 20, p. 519; am. 2002, ch. 345, § 27, p. 963.

**STATUTORY NOTES**

**Compiler's Notes.**

The letter "s" enclosed in parentheses so appeared in the law as enacted.

**39-4126. Violations misdemeanors.** — (1) Any person who willfully violates any provision of this chapter or who willfully violates any provisions of the codes enumerated in this chapter or rules promulgated by the administrator or the board pursuant to this chapter, is guilty of a misdemeanor, and upon conviction, shall be fined not more than three hundred dollars (\$300), or imprisoned for not more than ninety (90) days or by both fine and imprisonment. Violations of this chapter shall be tried in any court of competent jurisdiction within the state of Idaho.

(2) A separate violation is deemed to have occurred with respect to each building not in compliance with this chapter. Each day such violation continues constitutes a separate offense.

(3) The misdemeanor provisions of subsections (1) and (2) of this section shall not apply to manufactured homes. Violations of manufactured home construction and safety standards shall be tried in any court of competent jurisdiction.

**History.**

I.C., § 39-4126, as added by 1975, ch. 180, § 2, p. 486; am. 1988, ch. 264, § 21, p. 519; am. 2002, ch. 345, § 28, p. 963.

**39-4127. Civil action. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised I.C., § 39-4127, as added by 1975, ch. 180, § 2, p. 486, was repealed by S.L. 2002, ch. 345, § 29.

**39-4128. Reciprocity of standards with other states. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised I.C., § 39-4128, as added by 1975, ch. 180, § 2, p. 486; am. 1988, ch. 264, § 22, p. 519; am. 2002, ch. 345, § 30, p. 963, was repealed by S.L. 2007, ch. 252, § 4.

**39-4129. Severability.** — If any portion of this act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this act, or the application of such provision to persons or circumstances other than to those to which it is held invalid, shall not be affected thereby.

**History.**

I.C., § 39-4129, as added by 1975, ch. 180, § 2, p. 486.

**STATUTORY NOTES****Compiler's Notes.**

The term "this act" refers to the S.L. 1975, ch. 180, which is codified as §§ 39-4101 to 39-4107, 39-4111 to 39-4113, 39-4115, 39-4120, 39-4124 to 39-4126, 39-4129, and 39-4417.

**Effective Dates.**

Section 3 of S.L. 1975, ch. 180 declared this act shall be in full force and effect on and after July 1, 1975.

**39-4130, 39-4131. Duties of administrator — Right of inspections — Examination — Posting — Restraint — Penalty — Injunction to prevent operations. [Repealed.]**

**STATUTORY NOTES****Prior Laws.**

Former § 39-4130, which comprised S.L. 1949, ch. 254, § 5, p. 511, was repealed by S.L. 1974, ch. 39, § 1.

ch. 39, § 5, p. 1023; am. and redesign. 1996, ch. 421, § 8, p. 1406, was amended and redesignated as § 39-4130 by § 8 of S.L. 1996, ch. 421.

**Compiler's Notes.**

These sections were repealed by S.L. 2002, ch. 126, § 1 and S.L. 2002, ch. 345, § 31, effective July 1, 2002.

§ 39-4130: Former § 44-104, which comprised 1949, ch. 254, § 4, p. 511; am. 1951, ch. 248, § 1, p. 525; am. 1965, ch. 149, § 1, p. 288; am. 1969, ch. 295, § 1, p. 883; am. 1974,

§ 39-4131: Former § 44-105, which comprised I.C., § 44-104A, as added by 1965, ch. 149, § 2, p. 288; am. 1969, ch. 295, § 2, p. 883; as amended and changed to I.C., § 44-105 by 1974, ch. 39, § 6, p. 1023; am. and redesign. 1996, ch. 421, § 9, p. 1406, was amended and redesignated as § 39-4131 by § 9 of S.L. 1996, ch. 421.

**CHAPTER 42****RECREATIONAL VEHICLES AND PARK TRAILERS****SECTION.**

39-4201. Definitions.  
39-4202. Compliance.

**SECTION.**

39-4203. Exemption from local ordinances or regulations.

**39-4201. Definitions. —** As used in this chapter:

(1) "Park trailer" means a park trailer as defined in the American National Standards Institute (ANSI) A119.5 Standard for Park Trailers.

(2) "Recreational vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The entities are: travel trailer, camping trailer, truck camper, fifth-wheel trailer, and motor home.

(a) "Camping trailer" means a vehicular portable unit mounted on wheels and constructed with collapsible partial side walls which fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping or travel use.

(b) "Fifth wheel trailer" means a vehicular unit, mounted on wheels, designed to provide temporary living quarters for recreational, camping or travel use, of such size or weight as not to require special highway movement permit(s), of gross trailer area not to exceed four hundred (400)

square feet in the set up mode, and designed to be towed by a motorized vehicle that contains a towing mechanism that is mounted above or forward of the tow vehicle's rear axle.

(c) "Motor home" means a vehicular unit designed to provide temporary living quarters for recreational, camping or travel use built on or permanently attached to a self-propelled motor vehicle chassis or on a chassis cab or van which is an integral part of the completed vehicle.

(d) "Travel trailer" means a vehicular unit, mounted on wheels, designed to provide temporary living quarters for recreational, camping or travel use, of such size or weight as not to require special highway movement permits when towed by a motorized vehicle, and of gross trailer area less than three hundred twenty (320) square feet.

(e) "Truck camper" means a portable unit constructed to provide temporary living quarters for recreational, camping or travel use, consisting of a roof, floor and sides, designed to be loaded onto and unloaded from the bed of a pickup truck.

#### History.

I.C., § 39-4201, as added by 1995, ch. 267,  
§ 15, p. 856.

#### STATUTORY NOTES

##### Compiler's Notes.

The American National Standards Institute (ANSI) creates and promulgates many norms and guidelines for American businesses. See <http://ansi.org>.

The letters enclosed in parentheses so appeared in the law as enacted.

**39-4202. Compliance.** — No manufacturer shall sell or offer for sale within this state:

(1) Any new recreational vehicle that is not manufactured in compliance with the American National Standards Institute (ANSI) Standard A119.2 for Recreational Vehicles; or

(2) Any new park trailer that is not manufactured in compliance with the American National Standards Institute (ANSI) A119.5 Standards for Park Trailers.

#### History.

I.C., § 39-4202, as added by 1995, ch. 267,  
§ 15, p. 856.

#### STATUTORY NOTES

##### Compiler's Notes.

The American National Standards Institute (ANSI) creates and promulgates many norms and guidelines for American businesses. See <http://ansi.org>.

The letters "ANSI" enclosed in parentheses so appeared in the law as enacted.

**39-4203. Exemption from local ordinances or regulations.** — No recreational vehicle which meets the ANSI A119.2 Standard for Recreational Vehicles or park trailers which meets the ANSI A119.5 Standard for



Park Trailers shall be required to comply with any local ordinances or regulations adopting standards relating to plumbing, heat producing and electrical systems in recreational vehicles or park trailers.

**History.**

I.C., § 39-4203, as added by 1995, ch. 267,  
§ 15, p. 856.

**STATUTORY NOTES****Compiler's Notes.**

The American National Standards Institute (ANSI) creates and promulgates many

norms and guidelines for American businesses. See <http://ansi.org>.

## **CHAPTER 43**

### **MODULAR BUILDINGS**

**SECTION.**

- 39-4301. Definitions.  
39-4302. Modular building advisory board.  
39-4303. Fees.  
39-4304. Insignia of approval — Cost —  
Placement.  
39-4304A. Appointment and qualifications of  
modular building inspectors.

**SECTION.**

- 39-4305. Reciprocity of standards with other  
states.  
39-4306. Violations misdemeanors — Civil  
penalties.

**39-4301. Definitions.** — As used in this chapter:

(1) "Administrator" means the administrator of the division of building safety for the state of Idaho.

(2) "Board" means the modular building advisory board, as created in section 39-4302, Idaho Code.

(3) "Building site" means any tract, parcel or subdivision of land upon which a modular building is installed or is to be installed.

(4) "Closed construction" means any manufactured building or building component which may enclose factory installed structural, mechanical, electrical or plumbing systems and is not open for visual inspection at the building site.

(5) "Commercial coach" means a modular building with permanent running gear and a hitch assembly that is designed and constructed for nonresidential occupancy classifications only.

(6) "Division" means the Idaho division of building safety.

(7) "Modular building" means any building or building component, other than a manufactured or mobile home, which is of closed construction and is either entirely or substantially prefabricated or assembled at a place other than the building site.

**History.**

I.C., § 39-4301, as added by 2007, ch. 252,  
§ 5, p. 737.

STATUTORY NOTES

Cross References.

Administrator of the division of building safety, § 54-2607.

Prior Laws.

Former §§ 39-4301 to 39-4306 were repealed by S.L. 2005, ch. 120, § 1:

39-4301. Purpose. [1975, ch. 60, § 1, p. 124.]

39-4302. Persons who may consent to their own care. [1975, ch. 60, § 2, p. 124.]

39-4303. Persons who may give consent to care for others. [1975, ch. 60, § 3, p. 124.]

39-4303A. Blood testing. [I.C., § 39-4303A, as added by 1989, ch. 376, § 1, p. 945.]

39-4304. Sufficiency of consent. [1975, ch. 60, § 4, p. 124.]

39-4305. Form of consent. [1975, ch. 60, § 5, p. 124.]

39-4306. Responsibility for consent and documentation thereof. [1975, ch. 60, § 6, p. 124.]

**39-4302. Modular building advisory board.** — (1) A modular building advisory board is established in the division of building safety to advise the administrator in the administration and enforcement of the provisions of this chapter. The board shall consist of five (5) members, appointed by the governor, two (2) of whom shall represent manufacturers of modular buildings, two (2) of whom shall be dealers of modular buildings and one (1) of whom shall be a consumer who uses or has used a modular building. The board shall serve the following terms commencing July 1, 2007: two (2) members shall be appointed for a term of one (1) year, two (2) members shall be appointed for a term of two (2) years, and one (1) member shall be appointed for a term of three (3) years. The consumer member shall be a member appointed to a term beginning on July 1, 2007, or as soon thereafter as there is a vacancy on the board. Thereafter board members shall be appointed for a term of three (3) years. Not more than three (3) members shall at any time belong to the same political party. Whenever a vacancy occurs, the governor shall appoint a qualified person to fill the vacancy for the unexpired portion of the term. The members of the board shall be compensated as provided in section 59-509(n), Idaho Code, for each day spent in attendance at meetings of the board. A majority of members shall constitute a quorum, and a quorum at any meeting called by the administrator shall have full and complete power to act upon and resolve in the name of the board any matter, thing or question referred to it by the administrator, or which by reason of any provision of this chapter, it has the power to determine.

(2) The board shall, on the first day of each July or as soon thereafter as practicable, elect a chairman, vice-chairman and secretary from among its members, and these officers shall hold office until their successors are elected. As soon as the board has elected its officers, the secretary shall certify the results of the election to the administrator. The chairman shall preside at all meetings of the board and the secretary shall make a record of the proceedings which shall be preserved in the offices of the division of building safety. If the chairman is absent from any meeting of the board, his duties shall be discharged by the vice-chairman. All members of the board present at a meeting shall be entitled to vote on any question, matter, or thing which properly comes before the board.

(3) The board shall have the authority to promulgate rules in accordance with chapter 52, title 67, Idaho Code, to implement the provisions of this chapter.

**History.**

I.C., § 39-4302, as added by 2007, ch. 252,  
§ 5, p. 737; am. 2010, ch. 160, § 1, p. 334.

**STATUTORY NOTES****Cross References.**

Division of building safety, § 67-2601A.

**Prior Laws.**

Former § 39-4302 was repealed. See Prior Laws, § 39-4301.

**Amendments.**

The 2010 amendment, by ch. 160, substituted "section 59-509(n)" for "section 59-509(f)" in the next-to-last sentence in subsection (1).

**39-4303. Fees.** — (1) The following fees, as provided by board rule, shall be paid by the manufacturer of a modular building:

(a) Per building, one (1) building permit, plan review and inspection fee for structural, plumbing, electrical and HVAC, based upon the 1997 Uniform Building Code Table 1-A, plus ninety dollars (\$90.00) and two and one-half percent (2.5%) of the plumbing, electrical and HVAC installation costs.

(b) The division may charge a one hundred dollar (\$100) insignia fee in instances where building permit fees are not charged for modular buildings.

(2) All fees collected by the division under the provisions of this chapter shall be paid into the modular building account, which is hereby created in the dedicated fund. The expenses incurred in administering and enforcing the provisions of this chapter shall be paid from the account. The fees set forth in subsection (1) of this section shall be the exclusive fee requirements applicable to modular buildings governed by the provisions of this chapter, and shall supersede any program of any political subdivision of the state which sets fee requirements for the same inspections or services.

**History.**

I.C., § 39-4303, as added by 2007, ch. 252,  
§ 5, p. 737.

**STATUTORY NOTES****Prior Laws.**

Former § 39-4303 was repealed. See Prior Laws, § 39-4301.

**39-4304. Insignia of approval — Cost — Placement.** — (1) No modular building shall be installed on a building site in this state on or after July 1, 2007, unless it is approved and bears the insignia of approval of the division.

(2) Any modular building bearing an insignia of approval of the division shall be deemed to comply with codes, laws, or rules enacted by the state of Idaho which govern the manufacture and construction of such building.

(3) The cost of the insignia, if issued, shall be included as a part of the permit fee as set forth in section 39-4303, Idaho Code.

(4) No modular building which has been approved by the division shall be



in any way modified prior to its initial occupancy unless approval of that modification is first made by the division.

(5) Insignias shall be placed on the front, left-hand side of the building.

**History.**

I.C., § 39-4304, as added by 2007, ch. 252,  
§ 5, p. 737.

**STATUTORY NOTES**

**Prior Laws.**

Former § 39-4304 was repealed. See Prior  
Laws, § 39-4301.

**39-4304A. Appointment and qualifications of modular building inspectors.** — The administrator may appoint such number of modular building inspectors as is necessary for the effective enforcement of this chapter. Each modular building inspector shall:

- (1) Be knowledgeable regarding the type of installation being inspected;
- (2) Be certified as an inspector by an organization designated in administrative rule promulgated by the board. Each inspection certification shall correspond to the type of installation being inspected;
- (3) Demonstrate knowledge of the provisions of the Idaho Code and the administrative rule governing the type of installation being inspected; and
- (4) Not be permitted to:
  - (a) Be engaged or be financially interested in any business, trade, practice or work related to this chapter;
  - (b) Sell any supplies connected to the electrical, plumbing or heating, ventilation and air conditioning (HVAC) business; or
  - (c) Act as an agent, directly or indirectly, for any person, firm, copartnership, association or corporation engaged in the electrical, plumbing or HVAC business.

**History.**

I.C., § 39-4304A, as added by 2009, ch. 127,  
§ 1, p. 407.

**STATUTORY NOTES**

**Compiler's Notes.**

The letters "HVAC" enclosed in parentheses  
so appeared in the law as enacted.

**39-4305. Reciprocity of standards with other states.** — (1) If the administrator determines that standards for modular buildings that have been adopted by the statutes or rules of another state are at least equal to the standards adopted by the administrator, the administrator may so provide by rule.

(2) If the administrator determines that standards for modular buildings have not been adopted by another state, and modular buildings from that state are transported into this state to be offered for sale, the administrator may certify reciprocal states to inspect such modular buildings. If there is no

reciprocity agreement with a state of manufacture, then Idaho will inspect the building, plumbing, electrical and HVAC, provided that the out-of-state manufacturer shall bear the costs of travel and inspection services related to such inspection. If the administrator shall then determine that the modular buildings meet the standards of this state, the product shall be acceptable and the administrator may issue insignia for said modular buildings.

**History.**

I.C., § 39-4305, as added by 2007, ch. 252,  
§ 5, p. 737.

**STATUTORY NOTES****Prior Laws.**

Former § 39-4305 was repealed. See Prior Laws, § 39-4301.

**39-4306. Violations misdemeanors — Civil penalties.** — Any person, partnership, company, firm, association or corporation who shall willfully violate any of the provisions of this chapter, or the rules of the modular building advisory board or of the administrator herein provided for, or who shall refuse to perform any duty lawfully enjoined upon him by the administrator within the prescribed time; or who shall fail, neglect, or refuse to obey any lawful order given or made by the administrator, shall be guilty of a misdemeanor. In addition to any criminal proceedings, the administrator is authorized to bring either an administrative action or a civil proceeding in the courts against the violator and impose and recover a civil penalty against the violator as established by administrative rule, but not to exceed one thousand dollars (\$1,000). Each day of such violation shall constitute a separate offense. A violation will be considered a second or additional offense only if it occurs within one (1) year from the previous violation.

**History.**

I.C., § 39-4306, as added by 2007, ch. 252,  
§ 5, p. 737.

**STATUTORY NOTES****Cross References.**

Modular building advisory board, § 39-4302.

Penalty for misdemeanor when not otherwise provided, § 18-113.

**Prior Laws.**

Former § 39-4306 was repealed. See Prior Laws, § 39-4301.

**CHAPTER 44****HAZARDOUS WASTE MANAGEMENT****SECTION.**

- 39-4401. Short title.
- 39-4402. Legislative findings and purposes.
- 39-4403. Definitions.
- 39-4404. Consistency with federal law.

**SECTION.**

- 39-4405. Rules in general.
- 39-4406. General powers and duties of director.
- 39-4407. Identification of hazardous wastes.

## SECTION.

- 39-4408. Unauthorized treatment, storage, release, use or disposal of hazardous waste prohibited.
- 39-4409. Permit requirements for hazardous waste treatment, storage, or disposal facilities.
- 39-4410. Transportation of hazardous waste.
- 39-4411. Records — Reporting — Monitoring.
- 39-4412. Inspections — Right of entry.
- 39-4413. Enforcement procedures.
- 39-4414. Remedies.
- 39-4415. Violations constituting misdemeanors.
- 39-4416. Citizen suits.
- 39-4417. Hazardous waste emergency account.
- 39-4417A. [Reserved.]
- 39-4417B. Hazardous waste management account. [Repealed.]
- 39-4418. Local government notice.
- 39-4419. Interstate cooperation.

## SECTION.

- 39-4420. Employment security.
- 39-4421. Good samaritan protection.
- 39-4422. Severability.
- 39-4423. Disposal of restricted hazardous wastes prohibited.
- 39-4424. Disposal of manifested waste.
- 39-4425. [Reserved.]
- 39-4426. Appointment of inspectors.
- 39-4427. Commercial disposal fees.
- 39-4427A. [Amended and redesignated.]
- 39-4427B — 39-4427D. [Repealed.]
- 39-4428. Collection of commercial disposal fees — Returns.
- 39-4429. Books and records to be preserved — Entry and inspection by department of environmental quality.
- 39-4430. Additions and penalties.
- 39-4431. Collection and enforcement.
- 39-4432. Distribution of commercial disposal fee revenues.

**39-4401. Short title.** — This act may be known and cited as the “Hazardous Waste Management Act of 1983.”

**History.**

I.C., § 39-4401, as added by 1983, ch. 154, § 1, p. 416.

**STATUTORY NOTES****Compiler's Notes.**

The words “this act” refer to S.L. 1983, ch.

154, § 1 which is compiled as §§ 39-4401 to 39-4416 and 39-4418 to 39-4422.

**JUDICIAL DECISIONS**

**Cited in:** Idaho v. Hanna Mining Co., 699 F. Supp. 827 (D. Idaho 1987).

**RESEARCH REFERENCES**

**A.L.R.** — Amount and characteristics of wastes as equitable factors in allocation of response costs pursuant to § 113(f)(1) of Comprehensive Environmental Response, Com-

pensation, and Liability Act (CERCLA), 42 U.S.C.A. § 9613(f)(1): multiple waste streams. 162 A.L.R. Fed. 371.

**39-4402. Legislative findings and purposes.** — (1) The legislature of the State of Idaho finds:

(a) That continuing technological progress, increases in manufacturing, and the abatement of air and water pollution have resulted in ever-increasing quantities of hazardous waste;

(b) That the public health and safety, and the environment, are threatened when hazardous wastes are not managed in an environmentally sound manner;

(c) That the knowledge and technology necessary for alleviating adverse health, environmental and aesthetic impacts resulting from current



hazardous waste management and disposal practices are generally available; and,

(d) That the problem of proper management of hazardous waste has become a matter of great statewide concern.

(2) Therefore, it is hereby declared that the purposes of this act are:

(a) To protect the public health and safety, the health of living organisms, and the environment from the effects of the improper, inadequate, or unsound management of hazardous waste;

(b) To establish a program to track and control hazardous wastes from the time they are generated through transportation, treatment, storage, and disposal; and,

(c) To assure the safe and adequate management of hazardous wastes within this state.

#### History.

I.C., § 39-4402, as added by 1983, ch. 154,  
§ 1, p. 416.

#### STATUTORY NOTES

##### Compiler's Notes.

The words "this act" refer to S.L. 1983, ch.

154, § 1 which is compiled as §§ 39-4401 to 39-4416 and 39-4418 to 39-4422.

#### RESEARCH REFERENCES

**A.L.R.** — Validity and construction of statutes, ordinances, or regulations controlling discharge of industrial wastes into sewer systems. 47 A.L.R.3d 1224.

Applicability of zoning regulations to waste disposal facilities of state or local governmental entities. 59 A.L.R.3d 1244.

#### **39-4403. Definitions.** — As used in this chapter:

(1) "Board" means the Idaho board of environmental quality.

(2) "Commercial hazardous waste facility or site" means any hazardous waste facility whose primary business is the treatment, storage or disposal, for a fee or other consideration, of hazardous waste generated offsite by generators other than the owner and operator of the facility.

(3) "Department" means the Idaho department of environmental quality.

(4) "Director" means the director of the Idaho department of environmental quality or the director's authorized agent.

(5) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous waste into or on any land or water so that such hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

(6) "Gate ton" means the weight, in tons (2,000 pounds/ton), of waste material received at a facility. This weight does not include any subsequent changes to the weight resulting from the management of the waste by the facility.

(7) "Generator" means any person, who by virtue of ownership, management, or control, is responsible for causing or allowing to be caused the creation of a hazardous waste.

(8) "Hazardous waste" means a waste or combination of wastes of a solid,

liquid, semisolid, or contained gaseous form which, because of its quantity, concentration or characteristics (physical, chemical or biological) may:

- (a) Cause or significantly contribute to an increase in deaths or an increase in serious, irreversible or incapacitating reversible illnesses; or
- (b) Pose a substantial threat to human health or to the environment if improperly treated, stored, disposed of, or managed. Such wastes include, but are not limited to, materials which are toxic, corrosive, ignitable, or reactive, or materials which may have mutagenic, teratogenic, or carcinogenic properties but do not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to national pollution discharge elimination system permits under the federal water pollution control act, as amended, 33 U.S.C., section 1251 et seq., or source, special nuclear, or byproduct material as defined by the atomic energy act of 1954, as amended, 42 U.S.C., section 2011 et seq.

(9) "Hazardous waste management" means the systematic control of the collection, source separation, storage, treatment, transportation, processing, and disposal of hazardous wastes.

(10) "Hazardous waste facility or site" means any property, structure, or ancillary equipment intended or used for the transportation, treatment, storage or disposal of hazardous wastes.

(11) "Injection" means the subsurface emplacement of free liquids.

(12) "Manifest" means a form used for identifying the quantity, composition, origin, routing, waste identification code(s), and destination of hazardous waste during any transportation from the point of generation to the point of treatment, storage or disposal.

(13) "Manifested waste" means waste which at the point of origin or generation is required to be manifested for transportation in a manner similar to that of the federal uniform hazardous waste manifest or by other manifest requirements designed to assure proper treatment, storage and disposal of such waste.

(14) "PCB waste" means any waste or waste item which is not included in the definition of "hazardous waste" and which is contaminated with polychlorinated biphenyls.

(15) "Person" means any individual, association, partnership, firm, joint stock company, trust, estate, political subdivision, public or private corporation, state or federal governmental department, agency, or instrumentality, or any other legal entity which is recognized by law as the subject of rights and duties.

(16) "RCRA" means the resource conservation and recovery act of 1976 as amended from time to time.

(17) "Restricted hazardous waste" means a waste or combination of wastes regulated as land disposal restricted pursuant to federal statutes and regulations, including 40 CFR part 268. Restricted hazardous waste also includes byproduct, except as provided below, source, special nuclear materials or devices or equipment utilizing such materials regulated under the federal atomic energy act of 1954, as amended. Restricted hazardous waste shall not include radiologically contaminated waste materials from "Formerly Utilized Sites Remedial Action Program (FUSRAP)" sites admin-



istered by the United States army corps of engineers and being disposed of pursuant to a contract in existence on July 1, 2001, and as may be renewed thereafter, or byproduct materials or devices or equipment utilizing such materials that are authorized by the United States nuclear regulatory commission pursuant to the federal energy policy act of 2005, to be disposed of in a commercial hazardous waste facility.

(18) "Storage" means the containment of hazardous wastes, on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous wastes.

(19) "Transportation" means the movement of any hazardous waste to or from a hazardous waste facility or site.

(20) "Transporter" means any person who transports a hazardous waste to or from a hazardous waste facility or site.

(21) "Treatment" means any method, technique, or process, including neutralization, which is designed not to be an integral part of a production process, but which is rather designed to change the physical, chemical, or biological character or composition of any hazardous waste prior to storage or final disposal so as to neutralize such waste or so as to render such waste nonhazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

(22) "Waste" means any solid, semisolid, liquid or contained gaseous material for which no reasonable use or reuse is intended or which is intended to be discarded.

#### History.

I.C., § 39-4403, as added by 1983, ch. 154, § 1, p. 416; am. 1984, ch. 205, § 1, p. 502; am. 1986, ch. 148, § 1, p. 415; am. 1986, ch. 324, § 1, p. 794; am 1989, ch. 253, § 1, p. 626; am.

1993, ch. 291, § 1, p. 1082; am. 1994, ch. 419, § 1, p. 415; am. 2001, ch. 103, § 45, p. 253; am. 2001, ch. 297, § 3, p. 1072; am. 2011, ch. 38, § 1, p. 92.

### STATUTORY NOTES

#### Cross References.

Board of environmental quality, § 39-107.

Director of department of environmental quality, § 39-105.

Inspection of hazardous waste carriers, penalties §§ 67-2917, 67-2918.

#### Amendments.

This section was amended by two 2001 acts which appear to be compatible and have been compiled together.

The 2001 amendment, by ch. 103, § 45, substituted "environmental quality" for "health and welfare" throughout the section; in subsection (7)(b), substituted "byproduct" for "by product"; and made stylistic changes.

The 2001 amendment, by ch. 297, § 3, in subsection (17), added the second sentence.

The 2011 amendment, by ch. 38, in subsection (17), inserted "except as provided below" in the second sentence and added "or

byproduct materials or devices or equipment utilizing such materials that are authorized by the United States nuclear regulatory commission pursuant to the federal energy policy act of 2005, to be disposed of in a commercial hazardous waste facility" at the end.

#### Legislative Intent.

Section 1 of S.L. 2001, ch. 297 read: "It is the intent of the Legislature to restrict certain wastes containing radioactive materials from being disposed of in this state unless the Legislature specifically approves such disposal."

#### Federal References.

The resource conservation and recovery act of 1976, referred to in subdivision (16) of this section, is compiled as 42 USCS § 6901 et seq.



The federal energy policy act of 2005, referred to near the end of subsection (17) is P.L. 109-58 and it is codified generally in title 40 of the United States Code.

#### Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

**39-4404. Consistency with federal law.** — The legislature intends that the state of Idaho enact and carry out a hazardous waste program that will enable the state to assume primacy over hazardous waste control from the federal government.

The legislature finds that the RCRA, as amended, 42 U.S.C., section 6901 et seq., and federal regulations adopted pursuant thereto, establish complex and detailed provisions for regulation of those who generate, transport, treat, store, and dispose of hazardous wastes. The legislature cannot conveniently or advantageously set forth in this chapter all the requirements of all of the regulations which have been or will be established under RCRA. However, by the provisions of this chapter, the legislature desires to avoid the existence of duplicative, overlapping or conflicting state and federal regulatory systems.

Therefore, the board is directed to promulgate rules which are consistent with RCRA and the federal regulations adopted by the administrator of the United States environmental protection agency to implement RCRA. Farmers and ranchers who treat, store, or dispose of waste pesticides from their operations on lands owned or controlled by them shall not be required by board rules to do anything more than follow the instructions on the pesticide label and triple rinse empty containers in accordance with the RCRA regulations of the environmental protection agency. The board may not promulgate any rule that would impose conditions or requirements more stringent or broader in scope than RCRA and the RCRA regulations of the environmental protection agency. The board may, however, promulgate procedural rules and rules specifically authorized by this chapter or other state statutes without showing that those rules are required by RCRA or the regulations of the environmental protection agency; provided that those rules shall not conflict with this section, other sections of this chapter, RCRA, or the regulations of the environmental protection agency. Any rule promulgated by the board shall be valid until it is repealed or modified through the administrative process of chapter 52, title 67, Idaho Code.

#### History.

I.C., § 39-4404, as added by 1983, ch. 154, § 1, p. 416; am. 1986, ch. 182, § 1, p. 479; am.

1988, ch. 6, § 1, p. 6; am. 1988, ch. 259, § 1, p. 498; am. 1993, ch. 216, § 27, p. 587; am. 1993, ch. 291, § 2, p. 1082.

#### STATUTORY NOTES

#### Amendments.

This section was amended by two 1993 acts which appear to be compatible and have been compiled together.

The 1993 amendment, by ch. 216, § 27, in the first sentence of the second paragraph added "federal" following "6901 et seq., and"; in the third paragraph in the present first through the third sentences deleted "and regulations" following "rules" wherever they ap-

peared; in the present fourth sentence deleted "and regulations" following "rules" in the first four places it appears and deleted "rules and" preceding "regulations of the environmental protection agency."; and in the present fifth sentence deleted "or regulation" following "Any rule" and substituted "chapter 52, title 67, Idaho Code" for "section 67-5201, Idaho Code, et seq."

The 1993 amendment, by ch. 291, § 2, in

the first sentence of the third paragraph deleted "in substance" preceding "consistent with RCRA" and deleted a former second sentence.

**Effective Dates.**

Section 2 of S.L. 1986, ch. 182, declared an emergency. Approved April 1, 1986.

**39-4405. Rules in general.** — Pursuant to the procedures established by the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, the board shall adopt such rules as are necessary and feasible for the management of the generation, collection, transportation, treatment, storage, and disposal of hazardous wastes within the state. The board shall also adopt such rules as necessary to regulate persons who produce, burn, distribute, and market fuel containing hazardous waste. The rules promulgated by the board shall be a part of this code and shall have the force and effect of law. Such rules shall include, but not be limited to:

(1) Criteria for the determination of whether any waste or combination of wastes is hazardous for the purposes of this chapter;

(2) Rules for those who generate, transport, treat, store, or dispose of hazardous wastes;

(3) Rules, consistent with those issued by the United States environmental protection agency and the United States department of transportation, for containerization, labeling and manifesting of hazardous wastes;

(4) Rules specifying the terms and conditions under which the department shall issue, modify, suspend, revoke, or deny such permits as shall be required by this chapter;

(5) Lists of those wastes or combinations of wastes which are not compatible and which may not be stored or disposed of together;

(6) Procedures and requirements for the reporting of the generation, transportation, treatment, storage or disposal of hazardous wastes;

(7) Rules establishing standards and procedures for the training of personnel at generation sites and at hazardous waste facilities and sites;

(8) Release detection, prevention and correction rules applicable to all owners and operators of underground storage tanks, as may be necessary to protect human health and the environment;

(9) Rules specifying radioactive materials or other radioactive materials occurring naturally that may be disposed of at a commercial hazardous waste facility or site.

**History.**

I.C., § 39-4405, as added by 1983, ch. 154,

§ 1, p. 416; am. 1986, ch. 148, § 2, p. 415; am. 2001, ch. 297, § 4, p. 1072.

**STATUTORY NOTES****Legislative Intent.**

Section 1 of S.L. 2001, ch. 297 read: "It is the intent of the Legislature to restrict certain wastes containing radioactive materials

from being disposed of in this state unless the Legislature specifically approves such disposal."

**39-4406. General powers and duties of director.** — The director:

(1) Shall take all actions not inconsistent with this chapter as are necessary and feasible to enable the department to assume and continue primacy over hazardous waste management, pursuant to RCRA;



(2) May conduct and publish studies of hazardous waste management in this state;

(3) Shall develop, publish, and revise as necessary a plan for the safe and effective management of hazardous wastes within this state. Such a plan may identify those locations in the state which are not suitable for the establishment of hazardous waste treatment or disposal facilities or sites;

(4) Shall exercise all powers and discharge all duties expressed in or implied from the other sections of this chapter.

**History.**

I.C., § 39-4406, as added by 1983, ch. 154,  
§ 1, p. 416; am. 1993, ch. 291, § 3, p. 1082.

**39-4407. Identification of hazardous wastes.** — (1) The board shall establish criteria for determining if any waste or combination of wastes is hazardous or nonhazardous, for the purposes of this chapter.

(2) The board may adopt, and amend from time to time a list or lists of hazardous wastes. The board may, with public notice but without the necessity of a public hearing, list as hazardous any waste or combination of wastes determined to be hazardous by the United States environmental protection agency. To accomplish this goal, the board may adopt by reference the regulations containing the lists of hazardous wastes and the set of characteristics for identifying hazardous wastes promulgated by the United States environmental protection agency pursuant to RCRA. The board shall update the regulations adopted pursuant to this section as needed to reflect regulatory amendments promulgated by the United States environmental protection agency. The board may adopt regulations for a state hazardous waste delisting program equivalent to that set forth in 40 CFR sections 260.20(b) and 260.22. The state delisting program shall provide for public notice and opportunity for comment before granting or denying delisting requests.

**History.**

I.C., § 39-4407, as added by 1983, ch. 154,  
§ 1, p. 416; am. 1993, ch. 291, § 4, p. 1082.

**STATUTORY NOTES**

**Compiler's Notes.**

For state regulations or standards for haz-

ardous waste, see Idaho Administrative Rule 58.01.05.

**39-4408. Unauthorized treatment, storage, release, use or disposal of hazardous waste prohibited.** — (1) No person shall treat or store hazardous waste, nor shall any person discharge, incinerate, release, spill, place, or dispose any hazardous waste in such a manner that the waste, or any constituent thereof, may enter the environment, unless the department has issued said person a permit or a variance as required for the specific activity involved or exempted the activity from permit requirements.

(2) Effective six (6) months after the effective date of this provision, nonhazardous liquids shall not be disposed of in a landfill for which a permit



is required under section 39-4409, Idaho Code, or which is operating pursuant to interim status granted under section 3005(c) of RCRA, unless the owner or operator of the landfill demonstrates to the director that:

(a) The only reasonable alternative is placement in a landfill or unlined surface impoundment which contains or may contain hazardous waste; and

(b) Placement in the owner or operator's landfill will not present a risk of contamination of any existing or potential underground source of drinking water.

(3) Waste or used oil or other material which is contaminated or mixed with any hazardous waste, other than wastes identified solely on the basis of ignitibility, shall not be used for dust suppression or road treatment.

(4) The board shall have authority to prohibit:

(a) Land disposal of any hazardous waste; and

(b) Storage of any hazardous waste prohibited from land disposal, unless such storage is solely for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment or disposal.

#### History.

I.C., § 39-4408, as added by 1983, ch. 154,  
§ 1, p. 416; am. 1986, ch. 148, § 3, p. 415.

#### STATUTORY NOTES

##### Federal References.

Section 3005(c) of RCRA referred to in subsection (2) of this section is compiled as 42 USCS § 6925(c).

sion" refers to the effective date of that language added by S.L. 1986, ch. 148, which was July 1, 1986.

##### Compiler's Notes.

The phrase "the effective date of this provi-

**39-4409. Permit requirements for hazardous waste treatment, storage, or disposal facilities.** — (1) No person shall construct, operate, or modify a hazardous waste treatment, storage, or disposal facility or site without a permit from the department. The owner or operator of the facility or site rather than the builder shall be responsible for obtaining the permit. Permits may contain such conditions necessary to protect human health and environment. The board may exempt classes or categories of hazardous waste treatment, storage, or disposal facilities from the permit requirement if the exemption is in the public interest and consistent with RCRA requirements. The fact that a class or category of such facilities is not required to obtain a federal permit shall be persuasive evidence that an exemption is in the public interest.

(2) Interim status granted by RCRA or a permit issued by the United States environmental protection agency prior to the date that the state program is authorized by the administrator of that agency shall be adopted by the department as a state granted interim status or as a state granted permit until the department issues a new state permit. The board may adopt such rules and regulations as necessary to:

(a) Allow other facilities to qualify for interim status;

(b) Require existing interim status surface impoundments, new units, replacement of existing units and lateral expansions of existing interim status facilities to comply with all regulations which apply to new facilities; and

(c) Provide for the termination of interim status.

(3) The board shall promulgate rules and regulations establishing the terms and conditions for issuing permits to the described facilities and sites. The rules and regulations shall provide for, but not be limited to:

(a) Standards and procedures for the safe operation and maintenance of the facilities and sites;

(b) Education and training qualifications of personnel at the facilities and sites;

(c) Contractual commitment or consent to each facility or site from all holders of interests in the real property committed to that facility or site;

(d) Monetary assurances in such form and amount as are necessary for effective management, maintenance, and monitoring of the facilities and sites during and after operation;

(e) Evidence of financial responsibility for corrective action on-site and off-site;

(f) Liability insurance in such form and amount as is necessary to compensate for potential damages caused by the facilities and sites; provided, that liability insurance shall not be required in the event that liability insurance is not required by the federal regulations adopted pursuant to the RCRA;

(g) Emergency equipment and emergency response plans appropriate to the facilities and sites;

(h) Public participation in the permitting process consistent with 42 U.S.C. section 6974(b).

(4) Permits shall be issued for a period not to exceed ten (10) years or the maximum period allowed under RCRA, whichever is greater. However, permits may be reviewed at least every five (5) years and modified as necessary to take into account changes in this chapter or regulations promulgated pursuant to it and improvements in technology. Permits issued to hazardous waste facilities and sites by the department prior to the effective date of this chapter shall be reissued to conform with the provisions of this chapter and the rules and regulations promulgated under this chapter.

(5) Any permit issued after the effective date of this provision shall require corrective action to be taken on-site and off-site for all releases of hazardous waste or constituents, from any solid waste management unit at the treatment, storage, or disposal facility seeking the permit, regardless of the time when the waste was placed in such unit. Permits issued from November 8, 1985, until the effective date of this provision shall be reissued to conform with this provision.

(6) Any permit issued under this section may be revoked by the director pursuant to the provisions of section 39-4413, Idaho Code, if the permitted party fails to comply with the terms and conditions of the permit, this chapter, or the rules and regulations promulgated under this chapter.

(7) The department may issue a variance from the requirements of the rules and regulations promulgated under this section, if, in the judgment of

the director, application of the requirements would cause unreasonable hardship and the granting of a variance would not be harmful to the public interest or inconsistent with RCRA requirements. A variance shall not exceed one (1) year in duration and may be renewed or extended only after the department provides public notice and an opportunity for public comment.

(8)(a) The director of the department may issue a research, development and demonstration permit for any hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated. Any such permit shall include such terms and conditions as will assure protection of human health and the environment. Such permits shall:

1. Provide for the construction of such facilities, as necessary, and for operation of the facility for not longer than one (1) year (unless renewed as provided below); and
2. Provide for the receipt and treatment by the facility of only those types and quantities of hazardous waste which the director deems necessary for purposes of determining the efficiency and performance capabilities of the technology or process and the effects of such technology or process on human health and the environment; and
3. Include such requirements as the director deems necessary to protect human health and the environment (including, but not limited to, requirements regarding monitoring, operation, insurance or bonding, financial responsibility, closure, and remedial action); and
4. Include such requirements as the director deems necessary regarding testing and providing of information to the director with respect to the operation of the facility.

(b) The director may apply the criteria set forth in paragraph (a) of this subsection in establishing the conditions of each permit without separate establishment of regulations implementing such criteria.

(c) For the purpose of expediting review and issuance of permits under this subsection, the director may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements established in the general permit regulations except that there may be no modification or waiver of regulations regarding financial responsibility (including insurance) or of applicable public participation procedures.

(d) The director may renew a research, development and demonstration permit which has been issued pursuant to this subsection. The renewal term shall be no longer than one (1) year. A permit shall not be renewed more than three (3) times.

**History.**

I.C., § 39-4409, as added by 1983, ch. 154, § 1, p. 416; am. 1986, ch. 148, § 4, p. 415; am.

1987, ch. 102, § 1, p. 204; am. 1988, ch. 7, § 1, p. 7; am. 1988, ch. 259, § 2, p. 498.



## STATUTORY NOTES

**Amendments.**

This section was amended by two 1988 acts which appear to be compatible and have been compiled together.

The 1988 amendment, by ch. 7, in the first sentence of subsection (5), inserted "issued"; and added subdivision (8)(d).

The 1988 amendment, by ch. 259, in subdivision (2)(b), inserted "existing interim status surface impoundments"; and in the first sentence of subsection (5), inserted "issued."

**Compiler's Notes.**

The phrase "the effective date of this chapter" in subsection (4) refers to the effective date of S.L. 1983, ch. 154, which was July 1, 1983.

The phrase "the effective date of this provision" in two places in subsection (15) refers to the effective date of S.L. 1986, ch. 148, which was July 1, 1986.

The words enclosed in parentheses so appeared in the law as enacted.

**39-4410. Transportation of hazardous waste.** — (1) The board shall promulgate hazardous waste transportation rules and regulations to control the intrastate and interstate transportation of federally regulated types and quantities of hazardous waste. The rules and regulations shall be consistent with the rules and regulations issued by the United States department of transportation and the United States environmental protection agency. The rules and regulations shall also be consistent with the rules and regulations of the Idaho public utilities commission unless such consistency would impair the primacy or the effectiveness of the state's hazardous waste management program. In that case the board shall confer with the commission and endeavor to develop mutually acceptable transportation rules and regulations. If mutually acceptable rules and regulations cannot be developed, the board shall promulgate transportation rules and regulations that minimize conflict with the commission's rules and regulations while assuring the primary authority and effectiveness of the state's hazardous waste management program. Rules and regulations so promulgated by the board shall prevail over conflicting rules and regulations of the commission.

(2) The hazardous waste transportation rules and regulations shall apply to all transporters of federally regulated types and quantities of hazardous waste generated either by themselves or by others. These rules and regulations shall apply to any movement of a regulated quantity of hazardous wastes to or from a hazardous waste facility or site.

(3) The hazardous waste transportation rules and regulations shall provide for but not be limited to:

- (a) Standards for the containerization and labeling of hazardous wastes;
- (b) Standards for the handling and placarding of hazardous waste shipments;

(c) A hazardous waste tracking system requiring that:

- (i) All transporters of federally regulated types and quantities of hazardous waste obtain an identification number from the department, the environmental protection agency, or another approved state program, before accepting hazardous waste for transport;
- (ii) All shipments of federally regulated types and quantities of hazardous waste to be shipped off site or received from off site be accompanied by a manifest or similar form describing the hazardous waste being shipped and its destination;
- (iii) A copy of each manifest or similar form be returned to the generator and/or originator of the shipment and a copy be retained by the transporter for a minimum of three (3) years.

(4) The hazardous waste transportation rules and regulations may provide for special routing of hazardous waste shipments in this state when necessary to protect the public health, the public safety, or the environment consistent with federal statutory, regulatory and constitutional requirements.

(5) No commercial hazardous waste disposal facility or site permitted under section 39-4409, Idaho Code, shall receive regulated quantities of hazardous waste as defined by federal law from a motor vehicle or trailer unless the hazardous waste is accompanied by a proper manifest and the transporter has obtained a special permit from the Idaho transportation department as provided in sections 49-2202 and 49-2203, Idaho Code. If an improperly documented shipment of hazardous waste arrives at a permitted commercial hazardous waste facility or site, the owner or operator of the facility or site shall immediately notify the Idaho transportation department and the Idaho state police and follow the requirements of its permits and licenses for notification of appropriate agencies.

#### History.

I.C., § 39-4410, as added by 1983, ch. 154, § 1, p. 416; am. 1984, ch. 205, § 2, p. 502; am.

1986, ch. 231, § 1, p. 627; am. 1988, ch. 265, § 568, p. 549; am. 1993, ch. 291, § 5, p. 1082; am. 2000, ch. 469, § 98, p. 1450.

### STATUTORY NOTES

#### Cross References.

Public utilities commission, § 61-201 et seq.

#### Effective Dates.

Section 5 of S.L. 1986, ch. 231, read: "An emergency existing therefor, which emergency is hereby declared to exist, Section 49-2512, Idaho Code [amended and redesignated as § 49-2210], which is enacted by Section 4 of this act shall be in full force and effect on and after this act's passage and approval. The remaining provisions of this act shall be in full force and effect on and after January 1, 1987; provided, however, that the Idaho Transportation Board and Idaho Transportation Department shall be authorized to

permit any person renewing or purchasing a vehicle registration on and after July 1, 1986, to acquire a vehicle registration endorsement prior to January 1, 1987, and any receipts therefrom shall be placed in the Hazardous Material/Hazardous Waste Transportation Enforcement Account which is created in section 49-2507, Idaho Code [amended and redesignated as § 49-2205], which is enacted by Section 4, of this act and Section 49-2507, Idaho Code, which is enacted by Section 4 of this act shall be in full force and effect on and after July 1, 1986. Approved April 3, 1986."

Section 586 of S.L. 1987, ch. 265 provided that the act should become effective on and after January 1, 1989.

**39-4411. Records — Reporting — Monitoring.** — (1) Pursuant to the provisions of section 39-4405, Idaho Code, the board shall adopt, and amend as necessary, such rules relating to records, reporting, and monitoring as may be needed to achieve the purposes of this chapter. These rules may include, but shall not be limited to, prescribing procedures and requirements for:

- (a) The establishment, maintenance, and format of records and reports;
  - (b) The submittal of records and reports;
  - (c) The taking of samples and the performing of tests and of analyses;
  - (d) The use of approved monitoring methods and techniques;
  - (e) The installation, calibration, use, and maintenance of monitoring equipment; and
  - (f) The provision of relevant information to the department.
- (2) Sixty (60) days after promulgation of the criteria and lists specified



under section 39-4407, Idaho Code, and the rules required under section 39-4405, Idaho Code, and subsection (1) of this section, the generation, transportation, treatment, storage, or disposal of a hazardous waste in this state by any person without reporting such activity to the department as required by the rules issued pursuant to subsection (1) of this section shall be unlawful.

(3) Information obtained by the department or by agents, contractors, or other representatives of the department, under any provisions of this chapter, shall be subject to disclosure according to chapter 3, title 9, Idaho Code.

(4) Effective January 1, 1996, each generator shall, at the discretion of the director, no later than thirty (30) days after the end of each calendar year submit a written annual report to the department including the following information:

- (a) The types and quantities of hazardous wastes generated;
- (b) The types and quantities of such wastes shipped for treatment and disposal by landfilling or other means of disposal;
- (c) The types and quantities of such wastes remaining in storage at the end of the reporting period;
- (d) Whether such wastes are destined for disposal or treatment in this state or whether such wastes are destined for disposal or treatment outside this state.

(5) Effective January 1, 1996, the operator of each commercial hazardous waste disposal facility or site in the state shall, no later than thirty (30) days after the end of each calendar year, submit a written annual report to the department providing information on the types and quantities of wastes received which were generated in Idaho, and information on the types and quantities of wastes received which were generated in other states.

(6) Prior to March 1 of each year the department shall submit a report to the governor and the legislature detailing the types and quantities of hazardous wastes generated in this state, the types and quantities of such wastes shipped for treatment and disposal by landfilling or other means of disposal, the types and quantities of such wastes remaining in storage at the end of the most recent reporting period and the types and quantities of hazardous waste generated outside this state and shipped into this state for storage or disposal.

#### History.

I.C., § 39-4411, as added by 1983, ch. 154, § 1, p. 416; am. 1984, ch. 258, § 1, p. 618; am. 1986, ch. 148, § 5, p. 415; am. 1990, ch. 213,

§ 43, p. 480; am. 1993, ch. 291, § 6, p. 1082; am. 1996, ch. 125, § 1, p. 439; am. 1998, ch. 125, § 4, p. 461.

#### STATUTORY NOTES

#### Effective Dates.

Section 2 of S.L. 1996, ch. 125 declared an emergency and provided that the act should be in full force and effect on and after its

passage and approval and retroactive to January 1, 1996. Approved March 8, 1996.

Section 5 of S.L. 1998, ch. 125 declared an emergency. Approved March 19, 1998.

**39-4412. Inspections — Right of entry.** — (1) All inspections and



searches conducted under the authority of this chapter shall be performed in conformity with the prohibitions against unreasonable searches and seizures contained in the fourth amendment to the constitution of the United States and article I, section 17, of the constitution of the state of Idaho. The state shall not, under the authority granted by this chapter, conduct warrantless administrative searches of private property in the absence of either consent from the property owner or occupier or exigent circumstances such as a public health or environmental emergency.

(2) For the purposes of developing or enforcing any provision of this chapter or any rule or regulation authorized by this chapter, any duly authorized state employee or representative may, upon presentation of appropriate credentials, at any reasonable time:

(a) Enter upon any private or public property where hazardous wastes are or have been generated, transported, treated, stored, or disposed of to inspect and to secure samples of such wastes, their containers, and their labels;

(b) Enter into any aircraft, vehicle, vessel, rail car, trailer, van, or other means of conveyance where hazardous wastes are or have been contained to inspect and to secure samples of such wastes, their containers, and their labels;

(c) Enter any private or public property, or means of conveyance, where records, reports, information or test results relating to the generation, transportation, treatment, storage, or disposal of hazardous wastes exist to inspect and copy such documents.

(3) Upon request by an authorized agent of a property owner or facility operator, the department shall provide the property owner or facility operator with a receipt for samples taken and a copy of sample analysis. Duplicate samples shall similarly be provided upon request if the requesting party agrees to have the samples analyzed and to share the results of the analysis with the department.

(4) The right of entry of a duly authorized state employee or representative shall not be subject to the waiver of any potential tort liability of the facility owner or operator. The right of entry of a duly authorized state or health district employee shall not be subject to any confidentiality requirements other than those specified in section 39-4411(3), Idaho Code, and chapter 3, title 9, Idaho Code. The right of entry of a private contractor working in a representative capacity for the department may, however, be made subject to additional confidentiality requirements so long as those requirements do not interfere unreasonably with the development of information by the department or the transmission of information from the contractor to the department or the United States environmental protection agency.

(5) Any magistrate or district court judge is authorized to issue an administrative search warrant upon a request from the director describing reasonable cause for issuance of the warrant or the existence of a reasonable program of inspection.

**History.**

I.C., § 39-4412, as added by 1983, ch. 154,  
§ 1, p. 416; am. 1990, ch. 213, § 44, p. 480.

**STATUTORY NOTES****Effective Dates.**

Section 111 of S.L. 1990, ch. 213 as  
amended by § 16 of S.L. 1991, ch. 329 pro-  
vided that §§ 3 through 45 and 48 through

110 of the act should take effect July 1, 1993  
and that §§ 1, 2, 46 and 47 should take effect  
July 1, 1990.

**39-4413. Enforcement procedures.** — (A) Whenever the director determines that any person is in violation of any provision of this chapter or any permit, standard, regulation, condition, requirement, compliance agreement or order issued or promulgated pursuant to this chapter, one or more of the following actions may be taken:

(1) **ADMINISTRATIVE ENFORCEMENT ACTIONS.**

(a) Notice. The director may commence an administrative enforcement action by issuing a written notice of violation. The notice of violation shall identify the alleged violation with specificity, shall specify each provision of the act, rule, regulation, permit or order which has been violated, and shall state the amount of civil penalty claimed for each violation. The notice of violation shall inform the person to whom it is directed of an opportunity to confer with the director or the director's designee in a compliance conference concerning the alleged violation. A written response may be required within fifteen (15) days of receipt of the notice of violation by the person to whom it is directed.

(b) Scheduling Compliance Conference. If a recipient of a notice of violation contacts the department within fifteen (15) days of the receipt of notice, the recipient shall be entitled to a compliance conference. The conference shall be held within twenty (20) days of the date of receipt of notice, unless a later date is agreed upon between the parties. If a compliance conference is not requested, the director may proceed with a civil enforcement action as provided in subsection (3) of this section.

(c) Compliance Conference. The compliance conference shall provide an opportunity for the recipient of a notice of violation to explain the circumstances of the alleged violation and, where appropriate, to present a proposal for remedying damage caused by the alleged violation and for assuring future compliance. If the recipient and the director agree on a plan to remedy damage caused by the alleged violation and to assure future compliance, they may enter into a consent order formalizing their agreement. The consent order may include a provision for payment of any agreed civil penalty.

(d) Effect of Consent Order. A consent order shall be effective immediately upon signing by both parties and shall preclude any civil enforcement action for the same alleged violation. If a party does not comply with the terms of the consent order, the director may seek and obtain in any appropriate district court specific performance of the consent order and such other relief as authorized in this chapter.

(e) Failure to Reach Agreement on Consent Order. If the parties cannot reach agreement on a consent order within sixty (60) days after the



receipt of the notice of violation, or if the recipient does not request a compliance conference pursuant to subsection (A)(1)(b) of this section, the director may commence and prosecute a civil enforcement action in district court, in accordance with subsection (A)(3) of this section.

**(2) PERMIT SUSPENSION OR REVOCATION PROCEEDINGS.**

(a) **Grounds.** The director may revoke or temporarily suspend the permit of any hazardous waste facility or site pursuant to the grounds provided in subsection (6) of section 39-4409, Idaho Code.

A violation that is shown to have occurred as the result of an unforeseeable act of God despite a permitted party's reasonable efforts to comply with all applicable legal requirements shall not be grounds for a suspension or revocation.

(b) **Notice of Hearing.** The director shall commence a permit suspension or revocation action by giving a permitted party a written notice of intent to suspend or revoke. The notice shall inform the permitted party of facts or conduct which warrant suspension or revocation of the permit. The notice, hearing, and record requirements for contested cases contained in the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, and subsection (A)(2)(c) of this section shall apply to proceedings initiated under this subsection. Revocation or suspension of a permit shall become final fifteen (15) days after delivery of the notice of intent to revoke or suspend unless the permitted party requests a hearing.

**(c) Administrative Hearing Provisions.**

(i) Upon a timely request by a permit holder for a hearing to review the director's action under subsection (A)(2)(b) of this section, the director shall promptly conduct a hearing open to the public. The contested case provisions of the Idaho administrative procedure act shall apply to all hearings conducted under this subsection.

(ii) The director shall have the authority to request from the district court in and for Ada county or any other appropriate district court the issuance of an order in the nature of a subpoena compelling the attendance and testimony of witnesses and the production before the director of papers, books, drawings, documents, test results, and other evidence relevant to a permit suspension or revocation investigation or adjudication.

(iii) After the hearing, the director shall issue a written opinion setting forth findings of fact, conclusions of law and an order. An aggrieved person subject to the director's order may seek its review as a final order in a district court as provided by the Idaho administrative procedure act. District court review of the director's decision shall be limited to the record developed before the director.

**(3) CIVIL ENFORCEMENT ACTION.** The attorney general may commence and prosecute in district court a civil enforcement action. Civil enforcement actions shall be commenced and prosecuted in the district court in and for the county in which the alleged violation occurred, and may be brought against any person who is alleged to have violated any provision of this chapter or any rule, regulation, permit, condition, requirement, consent order, or order which has become effective pursuant to this chapter. Such action may be brought to compel compliance with



any provision of this chapter or with any rule, regulation, permit or order promulgated hereunder, and for any relief or remedies authorized in this chapter. The director shall not be required to initiate or prosecute an administrative action before the attorney general may commence and prosecute a civil enforcement action. In addition, the attorney general may delegate this authority regarding civil enforcement actions to the prosecuting attorney of the county where a civil enforcement action may arise.

(B) **ACTIONS AGAINST GUARANTORS.** If the owner or operator is in bankruptcy, reorganization or other arrangement pursuant to the federal bankruptcy code, or where jurisdiction cannot be obtained over an owner or operator likely to be solvent at the time of judgment, an action may be brought directly against a guarantor of financial responsibility by the state or any injured party for any claim arising from conduct for which guarantees of financial responsibility have been made. The guarantor may invoke all rights and defenses which would have been available to the owner or operator and all rights and defenses normally available to the guarantor.

(C) **LIMITATION OF ACTION FOR ADMINISTRATIVE AND CIVIL COURT PROCEEDINGS BROUGHT UNDER THE PROVISIONS OF THIS CHAPTER.** No civil or administrative proceeding may be brought to recover for a violation of this chapter or any permit, standard, regulation, condition, requirement or order issued or promulgated pursuant to this chapter more than two (2) years after the director had knowledge or ought reasonably to have had knowledge of the violation.

**History.**

I.C., § 39-4413, as added by 1983, ch. 154,  
§ 1, p. 416; am. 1986, ch. 148, § 6, p. 415; am.

1988, ch. 259, § 3, p. 498; am. 1989, ch. 38,  
§ 1, p. 49.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

subsection (B) of this section, is compiled as  
11 USCS § 101 et seq.

**Federal References.**

The federal bankruptcy code, referred to in

**39-4414. Remedies.** — The remedies specified in this section are cumulative and nonexclusive.

(1) **MONETARY PENALTIES.**

(a) Any person who makes a false statement or representation in any application, label, manifest, record, report, permit or other document filed, maintained, or used for the purpose of complying with the provisions of this chapter shall be liable for a civil penalty not to exceed ten thousand dollars (\$10,000) for each separate violation or for each day of a continuing violation.

(b) Any person who violates this chapter or any permit, standard, regulation, condition, requirement, compliance agreement, or order issued or promulgated pursuant to this chapter shall be liable for a civil penalty not to exceed ten thousand dollars (\$10,000) for each separate violation or for each day of a continuing violation.

(c) The imposition or computation of monetary penalties may take into account the seriousness of the violation, good faith efforts to comply with the law, and an enforceable commitment by the person against whom the penalty is directed to implement a supplemental environmental project. For purposes of this section, "supplemental environmental project" means a project which the person is not otherwise required to perform and which prevents pollution, reduces the amount of pollutants reaching the environment, contributes to public awareness of environmental matters, or enhances the quality of the environment. In evaluating a particular supplemental environmental project proposal, preference may be given to those projects with an environmental benefit, which relates to the violation or the objectives of the underlying statute which was violated, or which enhances the quality of the environment in the general geographic location where the violation occurred.

(2) **ASSESSMENT OF COSTS.** Any person who violates this chapter or any permit, standard, regulation, condition, requirement, compliance agreement, or order issued or promulgated pursuant to this chapter may be assessed for:

- (a) The state's costs for any nonroutine investigations, inspections, monitoring, or surveys which lead to evidence of the violation;
- (b) The state's costs, including the reasonable value of attorneys' services, for preparing and litigating the case;
- (c) The state's costs for mitigating, removing, correcting or terminating adverse effects upon soil, air, or water quality resulting from the violation;
- (d) The state's costs for impounding, storing, and disposing of contaminated property;
- (e) Compensation for damages to publicly held resources including but not limited to, land, water, recreational uses, wildlife, fish and aquatic life to restore the resource to its highest previous use;
- (f) Compensation for damages to privately held resources including, but not limited to, livestock, land, water, or other personal property, and compensation for court costs allowed by statute, reasonable attorney's fees for trial preparation and trial of the case, and all other reasonable costs of trial preparation and trial of the case;
- (g) Compensation for damages to personal health and compensation for court costs allowed by statute, reasonable attorney's fees for trial preparation and trial of the case, and all other reasonable costs of trial preparation and trial of the case;
- (h) The imposition or computation of costs may take into account the seriousness of the violation and good faith efforts to comply with the law.

(3) **RESTRAINING ORDERS, INJUNCTIONS AND OTHER RELIEF.**

(a) Any person who violates any provision of this chapter or any permit, standard, regulation, condition, requirement, compliance agreement, or order issued or promulgated pursuant to this chapter shall be subject to a permanent or temporary injunction, restraining order, or other relief deemed appropriate. Upon a showing to the court that a violation is causing an imminent hazard to the public health, the public safety, or to the environment, the department need not allege or prove at any stage of the proceeding that long-term irreparable damage will occur should the injunction or order not be issued or that the remedy at law is inadequate.



(b) A receiver may be appointed to oversee or operate any hazardous waste facility or site which is established or operated in violation of this chapter or any standard, regulation, condition, requirement, compliance agreement, or order issued or promulgated pursuant to this chapter.

(4) **PAYMENT TO HAZARDOUS WASTE EMERGENCY ACCOUNT.** All moneys collected by the department pursuant to subsections (1), (2) and (3) of this section to resolve any enforcement proceeding instituted under section 39-4413, Idaho Code, shall be paid into the hazardous waste emergency account created by section 39-4417, Idaho Code.

**History.**

§ 1, p. 416; am. 1984, ch. 157, § 1, p. 383; am. I.C., § 39-4414, as added by 1983, ch. 154, 1997, ch. 94, § 1, p. 219.

**39-4415. Violations constituting misdemeanors.** — (1) Any person who knowingly makes any false statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained or used for the purpose of complying with the provisions of this chapter shall be guilty of a misdemeanor and subject to a fine of not more than ten thousand dollars (\$10,000) or to imprisonment not to exceed one (1) year, or to both, for each separate violation or for each day of a continuing violation.

(2) Any person who knowingly violates any provision of this chapter or any permit, standard, regulation, condition, requirement, compliance agreement, or order issued or promulgated pursuant to this chapter shall be guilty of a misdemeanor and subject to a fine of not more than ten thousand dollars (\$10,000) or to imprisonment not to exceed one (1) year, or to both, for each separate violation or for each day of a continuing violation.

(3) An action may be commenced and prosecuted by the attorney general. The director shall not be required to initiate or prosecute an administrative or civil action before the attorney general may commence and prosecute a criminal action.

**History.**

I.C., § 39-4415, as added by 1983, ch. 154, § 1, p. 416; am. 1984, ch. 54, § 1, p. 94.

## STATUTORY NOTES

**Cross References.**

Attorney general, § 67-1401 et seq.

**39-4416. Citizen suits.** — (1) Except as provided in subsection (2) of this section, any person who has been injured or damaged by an alleged violation of any permit, standard, regulation, condition, requirement, or order which has become effective pursuant to this chapter, may commence a civil action on that person's own behalf against any person alleged to have committed the violation. A person commencing an action under this section shall be required to file a bond or equivalent security in an amount not less than one thousand dollars (\$1,000) or in conformance with the requirements of rule 65(c) of the Idaho Rules of Civil Procedure if injunctive relief is sought.



(2) No action may be commenced under subsection (1) of this section if the department has commenced and is diligently prosecuting an administrative, civil, or criminal action to require compliance with the law. Further, no action may be commenced under subsection (1) of this section unless the plaintiff has given the department sixty (60) days' notice and substantial evidence of the violation upon which the citizens' action is based. However, if the department commences an action in a court of the state of Idaho, any interested person may intervene as provided in rule 24(a) of the Idaho Rules of Civil Procedure.

(3) In any action under this section, the department may intervene as a matter of right.

(4) When issuing any final order in any action brought pursuant to this section, the court may award costs of litigation, including reasonable attorney and expert witness fees, to any prevailing party, whenever the court determines such an award is appropriate, except that the state of Idaho shall not be required to pay such costs in any citizen suit where the state has become a party.

(5) Nothing in this section shall restrict any right which a person, or class of persons, may have under any other statute or the common law.

#### **History.**

I.C., § 39-4416, as added by 1983, ch. 154,  
§ 1, p. 416; am. 1993, ch. 291, § 7, p. 1082.

**39-4417. Hazardous waste emergency account.** — (1) There is hereby created an account in the state treasury to be designated the hazardous waste emergency account.

(2) The account shall consist of moneys appropriated to the account by the legislature, moneys allotted to the account as a result of departmental compliance proceedings, moneys allotted to the account in a court ordered award or judgment, moneys allotted to the account in a court approved settlement, and moneys contributed to the account from other sources.

(3) Moneys in the account may be used by the director in the case of a hazardous waste emergency to pay the necessary costs of preventing, neutralizing, or mitigating any threat to the public health or safety, or to the environment caused by that emergency.

(4) The board may promulgate regulations for the withdrawal and use of funds from the account as specified in subsection (3) of this section.

(5) All moneys placed in the account are hereby perpetually appropriated to the department for the purposes described in subsection (3) of this section. All expenditures from the account shall be paid out in warrants drawn by the state controller upon presentation of the proper vouchers.

(6) Pending use, surplus moneys in the account shall be invested by the state treasurer in the same manner as provided under section 67-1210, Idaho Code. Interest earned on the investments shall be returned to the account.

#### **History.**

I.C., § 39-4417, as added by 1975, ch. 180,  
§ 2, p. 486; am. 1994, ch. 180, § 74, p. 420.

## STATUTORY NOTES

**Cross References.**

State controller, § 67-1001 et seq.

**Effective Dates.**

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Con-

stitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 74 of S.L. 1994, ch. 180 became effective January 2, 1995.

**39-4417A. [Reserved.]****39-4417B. Hazardous waste management account. [Repealed.]**

## STATUTORY NOTES

**Compiler's Notes.**

This section, which comprised I.C., § 39-4417B, as added by 1984, ch. 205, § 3, p. 502;

am. 1986, ch. 231, § 2, p. 627; am. 1997, ch. 313, § 1, p. 926, was repealed by S.L. 1999, ch. 290, § 1, p. 718, effective July 1, 1999.

**39-4418. Local government notice.** — A permit for a new hazardous waste land disposal facility or site shall not be issued until the department has given ninety (90) days' notice to the board of county commissioners of the county in which the proposed facility or site is to be located.

**History.**

I.C., § 39-4418, as added by 1983, ch. 154, § 1, p. 416.

**39-4419. Interstate cooperation.** — The director shall have the power and the duty to encourage cooperative activities between the department and other states for the improved management of hazardous wastes, and so far as is practical, to provide for uniform state regulations and for interstate agreements relating to hazardous waste management. The state may enter into such agreements with other states to accomplish the purposes as set out in this chapter.

**History.**

I.C., § 39-4419, as added by 1983, ch. 154, § 1, p. 416.

**39-4420. Employment security.** — (1) No employee of a hazardous waste generator, transporter or treatment, storage, or disposal facility or site shall be dismissed, suspended, or otherwise discriminated against because the employee testifies, provides information or otherwise assists in the enforcement or administration of the provisions of this chapter.

(2) Any employer who knowingly violates the provisions of subsection (1) of this section shall be liable for damages, costs and attorneys' fees, in addition to any other liability or relief authorized by this chapter, by any other statute, or by the common law.

**History.**

I.C., § 39-4420, as added by 1983, ch. 154,  
§ 1, p. 416.

**39-4421. Good samaritan protection.** — (1) Notwithstanding any provision of law to the contrary, no person who provides assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened leakage, seepage, or other release of hazardous waste, or in preventing, cleaning up, or disposing of or in attempting to prevent, clean up or dispose of any such leakage, seepage or other release, shall be subject to civil liabilities or penalties of any type.

(2) The immunities provided in subsection (1) of this section above shall not apply to any person:

(a) Whose act or omission caused in whole or in part such actual or threatened leakage, seepage or other release and who would otherwise be liable therefor; or

(b) Who receives compensation other than reimbursement for out-of-pocket expenses for services in rendering such assistance or advice.

(3) Nothing in section [subsection] (1) above shall be construed to limit or otherwise affect the liability of any person for damages resulting from such person's gross negligence, or from such person's reckless, wanton, or intentional misconduct.

**History.**

I.C., § 39-4421, as added by 1983, ch. 154,  
§ 1, p. 416.

**STATUTORY NOTES****Compiler's Notes.**

The bracketed insertion in subsection (3)

was added by the compiler to correct the style of the reference.

**39-4422. Severability.** — The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.

**History.**

I.C., § 39-4422, as added by 1983, ch. 154,  
§ 1, p. 416.

**STATUTORY NOTES****Compiler's Notes.**

The words "this act" refer to S.L. 1983, ch.

154, § 1 which is compiled as §§ 39-4401 to 39-4416 and 39-4418 to 39-4422.

**39-4423. Disposal of restricted hazardous wastes prohibited.** —

(1) Notwithstanding any other provision of law to the contrary, no person shall discharge, deposit, inject, dump, spill, leak, or place any restricted hazardous waste, as defined in section 39-4403, Idaho Code, into or on any land or water at a commercial hazardous waste facility or site.



(2) The department may issue a variance from the requirements of subsection (1) of this section, if, in the judgment of the director, application of the requirements would cause undue hardship and the granting of the variance would not be harmful to the public interest or inconsistent with RCRA requirements. In issuing the variance, the director shall take into account:

- (a) The long-term uncertainties associated with land disposal;
  - (b) The goal of managing hazardous waste in an appropriate manner in the first instance; and
  - (c) The persistence, toxicity, mobility, and propensity to bioaccumulate of such hazardous wastes and their hazardous constituents.
- (3)(a) The board shall promulgate rules and regulations specifying those levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized.
- (b) If such restricted hazardous waste has been treated to the level or by a method specified in regulations promulgated under this subsection, such waste or residue thereof shall not be subject to the prohibition in subsection (1) of this section and may be disposed of in a land disposal facility which meets the requirements of this chapter.

**History.**

I.C., § 39-4423, as added by 1986, ch. 324,  
§ 2, p. 794.

**39-4424. Disposal of manifested waste.** — Manifested waste, as that term is defined in section 39-4403, Idaho Code, shall only be treated, stored or disposed of in this state at a permitted hazardous waste treatment, storage or disposal facility unless the burning of such manifested waste to produce heat is otherwise lawful.

**History.**

I.C., § 39-4424, as added by 1989, ch. 253,  
§ 2, p. 626.

**STATUTORY NOTES**

**Effective Dates.**

Section 3 of S.L. 1989, ch. 253 declared an emergency. Approved March 29, 1989.

**39-4425. [Reserved.]**

**39-4426. Appointment of inspectors.** — (1) The department of environmental quality shall assign a sufficient number of employees and equipment to inspect hazardous waste facilities or sites permitted under section 39-4409, Idaho Code, and located in Idaho where disposal of hazardous waste occurs for the purpose of assuring the protection of the health and safety of the public by monitoring the receipt and handling of hazardous wastes which have been transported by common carrier.

(2) All employees of the department designated pursuant to subsection (1) of this section shall alert proper authorities or peace officers regarding violations pursuant to this chapter, violations pursuant to title 49, Idaho Code, and violations to any rules issued pursuant to section 67-2901A, Idaho Code.

(3) All actions brought for violations of the provisions of this chapter or rules promulgated pursuant thereto shall be brought as provided for in this chapter. All actions brought for violations of the provisions of title 49, Idaho Code, shall be brought as provided in that title.

**History.**

I.C., § 39-4426, as added by 1984, ch. 205,  
§ 4, p. 502; am. 1986, ch. 231, § 3, p. 627; am.

1988, ch. 265, § 569, p. 549; am. 1999, ch.  
383, § 1, p. 1051; am. 2001, ch. 103, § 46, p.  
253.

**STATUTORY NOTES**

**Effective Dates.**

Section 586 of S.L. 1987, ch. 265 provided

that the act should become effective on and  
after January 1, 1989.

**39-4427. Commercial disposal fees.** — (1) There is imposed on the owner or operator of every commercial hazardous waste disposal facility or site permitted under section 39-4409, Idaho Code, the lowest applicable fee for each ton of waste or fraction thereof, as follows:

- (a) Thirty dollars (\$30.00) per gate ton or fraction thereof for all hazardous wastes as defined by RCRA or section 39-4407, Idaho Code;
- (b) Twenty-five dollars (\$25.00) per gate ton or fraction thereof for all manifested wastes not otherwise defined in this subsection;
- (c) Two dollars (\$2.00) per gate ton or fraction thereof for all manifested remediation wastes not otherwise defined in this subsection;
- (d) Twenty dollars (\$20.00) per gate ton or fraction thereof for the first two thousand five hundred (2,500) gate tons or less of wastes received by a facility or site from the same site, property or hazardous waste management unit if the wastes: (i) are PCBs regulated under Idaho or federal law and are in concentrations greater than fifty (50) parts per million; (ii) are hazardous debris; (iii) are hazardous wastes that become subject to regulation solely as a result of a removal or remedial action taken in response to environmental contamination; or (iv) are hazardous wastes that result from corrective action or closure of a regulated or nonregulated hazardous waste management unit;
- (e) Ten dollars (\$10.00) per gate ton or fraction thereof for all wastes contained in paragraph (d) of this subsection, if the wastes are received by the same facility or site and are from the same site, property or hazardous waste management unit in an amount greater than two thousand five hundred (2,500) gate tons up to twelve thousand five hundred (12,500) gate tons;
- (f) Five dollars (\$5.00) per gate ton or fraction thereof for all wastes contained in paragraph (d) of this subsection, if the wastes are received by the same facility or site and are from the same site, property or hazardous waste management unit in an amount greater than twelve thousand five hundred (12,500) gate tons up to twenty-five thousand (25,000) gate tons;

(g) Two dollars and fifty cents (\$2.50) per gate ton or fraction thereof for all wastes contained in paragraph (d) of this subsection, if the wastes are received by the same facility or site and are from the same site, property or hazardous waste management unit in an amount greater than twenty-five thousand (25,000) gate tons;

(h) Five dollars (\$5.00) per gate ton or fraction thereof for all hazardous wastes that: (i) are delisted or treated so that the wastes are no longer hazardous wastes; or (ii) are nonhazardous radiologically contaminated wastes including materials from the "Formerly Utilized Sites Remedial Action Program (FUSRAP)" sites administered by the government of the United States; or (iii) are PCBs in concentrations less than fifty (50) parts per million and not otherwise regulated by Idaho or federal law; or (iv) are wastes not otherwise defined in this subsection.

(2) The fees set forth in subsection (1) of this section shall not apply to any of the following types of wastes:

(a) Wastes generated or disposed of by a public agency or other person operating a household hazardous waste collection program;

(b) Wastes generated or disposed of by any agency of the state of Idaho.

Any waste for which the fees are waived under the provisions of this section must be noted as fee-waived waste on the return required in section 39-4428, Idaho Code, and is subject to all audit provisions of section 39-4429, Idaho Code.

(3) For wastes disposed of by any agency of the state of Idaho at any commercial hazardous waste disposal facility or site permitted under section 39-4409, Idaho Code, the director, pursuant to a written agreement with the director, the owner or operator of any such facility or site, may credit on the return required in section 39-4428, Idaho Code, and in the fee remitted, an amount equal to the actual cost charged by such owner or operator per gate ton or fraction thereof for the characterization, collection, identification, transportation, treatment, storage and disposal of wastes at such facility or site.

#### **History.**

I.C., § 39-4427, as added by 1984, ch. 205, § 5, p. 502; am. 1992, ch. 251, § 1, p. 735; am. 1993, ch. 291, § 8, p. 1082; am. 1994, ch. 419, § 2, p. 1310; am. 1995, ch. 127, § 1, p. 856;

am. 1997, ch. 313, § 2, p. 926; am. and redesisg. 1998, ch. 229, § 1, p. 778; am. and redesisg. 1999, ch. 290, § 2, p. 718; am. 2001, ch. 297, § 2, p. 1072; am. 2002, ch. 176, § 1, p. 522; am. 2004, ch. 117, § 1, p. 391.

### **STATUTORY NOTES**

#### **Legislative Intent.**

Section 1 of S.L. 2001, ch. 297 read: "It is the intent of the Legislature to restrict certain wastes containing radioactive materials from being disposed of in this state unless the Legislature specifically approves such disposal."

#### **Compiler's Notes.**

Former § 39-4427, as added by 1984, ch. 205, § 5, p. 502; am. 1992, ch. 251, § 1, p. 735; am. 1993, ch. 291, § 8, p. 1082; am. 1994, ch. 419, § 2, p. 1310; am. 1995, ch. 127, § 1, p.

856; am. 1997, ch. 313, § 2, p. 926, was amended and redesignated as § 39-4427A by S.L. 1998, ch. 229, § 1, p. 778. Section 2 of S.L. 1999, ch. 290 amended and redesignated § 39-4427A back to its original placement as § 39-4427.

The letters "FUSRAP" enclosed in parentheses so appeared in the law as enacted.

#### **Effective Dates.**

Section 2 of S.L. 2004, ch. 117 declared an emergency. Approved March 19, 2004.



**39-4427A. [Amended and redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 39-4427, which comprised 1984, ch. 205, § 5, p. 502; am. 1992, ch. 251, § 1, p. 735; am. 1993, ch. 291, § 8, p. 1082; am. 1994, ch. 419, § 2, p. 1310; am. 1995, ch. 127, § 1, p. 856; am. 1997, ch. 313, § 2, p. 926; was

amended and redesignated as § 39-4427A by S.L. 1998, ch. 229, § 1, p. 778. Section 2 of S.L. 1999, ch. 290 amended and redesignated § 39-4427A back to its original placement as § 39-4427.

**39-4427B — 39-4427D. Generator fees — Treatment, storage or disposal facility fee — Hazardous waste fees — Duplication. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

The following sections were repealed by S.L. 1999, ch. 290, § 1, p. 718, effective July 1, 1999:

39-4427B, which comprised S.L. 1998, ch. 229, § 2, p. 778, am. S.L. 1999, ch. 49, § 1, was amended by S.L. 1999, ch. 49, § 1, effective July 1, 1999 and was repealed by S.L. 1999, ch. 290, § 1, effective July 1, 1999.

39-4427C, which comprised S.L. 1998, ch. 229, § 3, p. 778, was repealed by S.L. 1999, ch. 290, § 1, effective July 1, 1999.

39-4427D, which comprised S.L. 1998, ch. 229, § 4, p. 778, was repealed by S.L. 1999, ch. 290, § 1, effective July 1, 1999.

**39-4428. Collection of commercial disposal fees — Returns. —**

(1) The fees imposed under section 39-4427, Idaho Code, shall be due and payable in monthly installments by the owner, agent, employee, or operator of such hazardous waste facility or site and remittance shall be made to the Idaho department of environmental quality on or before the fifteenth day of the month next succeeding the end of the monthly period in which the fee accrued. The owner, operator or designated employee or agent of the hazardous waste facility or site, on or before the fifteenth day of the month, shall make out a return, upon such forms setting forth such information as the department may require, showing the amount of the fee for which the owner or operator of the hazardous waste facility or site is liable for the preceding monthly period, and shall sign and transmit the same to the department, together with a remittance for such amount in the form required.

(2) The department may relieve any person or class of persons from the obligation of filing monthly returns and may require the return to cover other reporting periods, but in no event shall returns be filed for a period greater than three (3) months.

**History.**

I.C., § 39-4428, as added by 1984, ch. 205, § 6, p. 502; am. 1998, ch. 229, § 5, p. 778; am.

1999, ch. 290, § 3, p. 716; am. 2001, ch. 103, § 47, p. 253.

STATUTORY NOTES

**Effective Dates.**

Section 8 of S.L. 1998, ch. 229 declared an emergency. Approved March 20, 1998.

**39-4429. Books and records to be preserved — Entry and inspection by department of environmental quality.** — Every person or entity subject to the imposition of the fees specified in section 39-4427, Idaho Code, shall keep complete and accurate records, including itemized invoices and manifests for federally regulated types and quantities of hazardous waste ultimately disposed of at a hazardous waste facility or site in Idaho. All books, documents and papers, computer tapes, discs, and other records required to be kept by this section shall be preserved for a period of at least five (5) years from the date of the records or the date of the entries appearing in the records, unless the department in writing, authorized their destruction or disposal at an earlier date. For purposes of this chapter, at any time during usual business hours, the department or duly authorized agents or employees, may enter any place of business of the owner or operator of a hazardous waste facility or site where hazardous wastes are disposed and inspect the premises, the records required to be kept under this chapter, and the hazardous wastes or other chemicals contained therein, to determine whether or not all the applicable provisions of sections 39-4427 and 39-4428, Idaho Code, are being fully complied with. Trade secret information obtained by the department under the provisions of this section shall be treated in the same manner as such information obtained under section 39-4411, Idaho Code. If the department, or any of its authorized agents or employees is unreasonably denied free access or is unreasonably hindered or interfered with in making the examination of a hazardous waste facility or site, that hindrance or interference shall constitute grounds for suspension or revocation of the facility or site’s permit by the director of the department of environmental quality under subsection (b) [(A)(2)] of section 39-4413, Idaho Code.

**History.**

I.C., § 39-4429, as added by 1984, ch. 205, § 7, p. 502; am. 1998, ch. 229, § 6, p. 778; am.

1999, ch. 290, § 4, p. 718; am. 2001, ch. 103, § 48, p. 253.

STATUTORY NOTES

**Compiler’s Notes.**

The bracketed insertion in the last sentence was added by the compiler to correct the statutory reference.

**Effective Dates.**

Section 8 of S.L. 1998, ch. 229 declared an emergency. Approved March 20, 1998.

JUDICIAL DECISIONS

**“Water” and “Chemical” Distinguished.**

The legislature has indicated by its use of the word “chemical” in several statutes that

water should not be considered to be a “chemical.” *Moosman v. Idaho Horse Racing Comm’n*, 117 Idaho 949, 793 P.2d 181 (1990).

**39-4430. Additions and penalties.** — The additions, penalties, and

requirements provided by the Idaho income tax act, sections 63-3046, 63-3075, 63-3076 and 63-3077, Idaho Code, as they now exist or as they may be subsequently amended, shall apply in the same manner and to the same extent to this act as to the Idaho income tax act and shall cover such additions, penalties and requirements and shall, for this purpose, be described and be for acts, omissions, delinquencies, and requirements under this chapter.

**History.**

I.C., § 39-4430, as added by 1984, ch. 205,  
§ 8, p. 502.

**STATUTORY NOTES**

**Compiler's Notes.**

The term "this act" refers to S.L. 1984, ch. 205, which is compiled as §§ 18-3905, 39-

4403, 39-4410, 39-4426, 39-4427, 39-4428 to 39-4432, 67-2917, and 67-2918.

**39-4431. Collection and enforcement.** — (1) The collection and enforcement procedures available to the Idaho state tax commission provided by the Idaho income tax act, sections 63-3030A, 63-3038, 63-3039, 63-3040, 63-3042 through 63-3045A, 63-3047 through 63-3065A, 63-3068, 63-3070, 63-3071, 63-3072, 63-3073 and 63-3078, Idaho Code, as they now exist or as they may subsequently be amended, shall apply and be available to the department of environmental quality for the enforcement of the commercial disposal fee and for the assessment and collection of any amounts due thereunder. Said sections shall, for the aforementioned purposes, be considered part of this chapter and wherever liens or any other proceedings are defined as income tax liens or proceedings, they shall, when applied in enforcement or collection under this chapter, be described as commercial disposal fee liens and proceedings.

(2) The department of environmental quality may be made a party defendant in any action at law or in equity by any person aggrieved by the unlawful seizure or sale of his property, or in any suit for refund or to recover an overpayment, but only the state of Idaho shall be responsible for any final judgment secured against the department of environmental quality and said judgment shall be paid or satisfied out of the general fund of the state.

**History.**

I.C., § 39-4431, as added by 1984, ch. 205,  
§ 9, p. 502; am. 1997, ch. 313, § 3, p. 926; am.

1999, ch. 290, § 5, p. 718; am. 2001, ch. 103,  
§ 49, p. 253.

**STATUTORY NOTES**

**Cross References.**

State tax commission, § 63-101.

**Compiler's Notes.**

Section 63-3052, referred to in this section, was repealed by S.L. 1987, ch. 86, § 3.

Section 63-3053, referred to in this section, was repealed by S.L. 1997, ch. 205, § 5.

Section 63-3054, referred to in this section, was repealed by S.L. 1997, ch. 205, § 5.

Section 63-3070, referred to in this section, was repealed by S.L. 1989, ch. 363, § 2.

**39-4432. Distribution of commercial disposal fee revenues.** — The



revenues received from the commercial disposal fees imposed by this chapter and any penalties, interest, or deficiency additions, shall be paid over to the state treasurer by the department to be distributed periodically but no less frequently than quarterly as follows:

(1) An amount equal to ninety-five percent (95%) shall be remitted to the general fund of the state; and

(2) An amount equal to the remaining five percent (5%) shall be remitted to the county treasurer of the county or counties where the activity occurred which caused the fees to be assessed pursuant to this chapter. Moneys shall be apportioned to the counties in the same proportional manner in which they were collected. Moneys returned to counties shall be utilized by the county to respond to health and environmental problems which may be caused by hazardous waste emergencies or spills, or improperly handled or packaged hazardous waste.

<b>History.</b>	am. 1997, ch. 313, § 4, p. 926; am. 1998, ch.
I.C., § 39-4432, as added by 1984, ch. 205,	229, § 7, p. 778; am. 1999, ch. 290, § 6, p.
§ 10, p. 502; am. 1989, ch. 419, § 1, p. 1023;	718.

**STATUTORY NOTES**

<b>Effective Dates.</b>	Section 8 of S.L. 1998, ch. 229 declared an
Section 14 of S.L. 1984, ch. 205 declared an	emergency. Approved March 20, 1998.
emergency. Approved April 3, 1984.	



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